

Costs of Defense and Children's Representation in Dependency and Termination Cases

**Washington State Office of Public Defense
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WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

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Executive Summary

The Office of Public Defense (OPD), a judicial branch agency that manages indigent appellate defense funding, was asked by the 1999 Washington State Legislature to develop a cost proposal to address defense and children's representation costs in dependency and termination cases and the impact of increased filings by the state under RCW 13.34 on indigent defense costs, and to recommend strategies to ensure an equitable method of paying for these cases.

Importance of Dependencies and Terminations

- **The Washington State Legislature and Washington Supreme Court, as well as Congress and the US Supreme Court, have recognized the fundamental nature of these proceedings and the necessity of providing legal representatives for the parties.**

Dependency petitions are filed by DSHS alleging child abuse and neglect in order to obtain court intervention to protect the child. Terminations petitions are filed by DSHS to sever a child-parent relationship for all purposes. Under Washington law, RCW 13.34, court-appointed counsel is guaranteed for indigent parents, guardians, and legal custodians. Representatives are also appointed for most children under Washington law, RCW13.34.

Data Collection

- **The OPD director and advisory committee members visited juvenile courts in Benton-Franklin, Grays Harbor, King, Mason, Pierce, Snohomish, Thurston, and Yakima counties to meet with and interview judges, commissioners, attorneys, and CASA volunteers, and to observe dependency proceedings.**

OPD investigated dependency and termination case representation costs by surveying the juvenile courts and approximately thirty-five indigent defense attorneys. Recent reports from several state agencies on dependency and termination cases were also consulted extensively.

Current Defense and Children's Representation

- **The payment system for parents, guardians, legal custodians, and children's representatives is in crisis in many counties, and the counties lack funds to implement increases**

Changes in federal and state laws require dependency and termination cases to be resolved on an accelerated basis so children can be permanently placed. Both indigent defense attorneys and children's representatives often already have staggeringly high caseloads, which may number two hundred or more. Resources are not available to respond to increased filings by the state and increased complexities of the caseload.

Overview of Findings and Recommended Cost Proposal Strategies

Payment is Inequitable from County to County

Depending on the county in which the family resides, payment for representation of parents, guardians, or legal custodians ranges from about \$169 per case per year to \$1000 per case per year. County payment for children's representatives ranges from under \$100 per case per year to \$1200 per case per year.

The State Funds the Office of the Attorney General at a Much Higher Rate than the Counties have been Able to Pay

- **In 1998, the Office of the Attorney General budget for dependency and termination cases was \$10,342,398.**
- **In 1998, the children's representation total was \$5,220,860 for 98% of the state's open dependency and termination cases - *about half the AG's budget.***
- **In 1998, the parents, guardians, and legal custodian's representation total was \$5,160,173 for 98% of the dependency and termination cases that were open in 1998 - *about half the AG's budget.*** The statewide defense budget covers an estimated additional 30% of legal representations, because in many cases, two defense attorneys are required for parents who have conflicts of interest, such as unmarried parents.
- **For the 1999-2001 biennium, the Legislature appropriated an *additional 1.9 million* to the AG to accelerate termination filings - but no funds were earmarked for additional representation for children and their parents, guardians, or legal custodians.**

At the present, the counties clearly do not have funds available to increase payment for defense and children's representation in order to keep up with the federal and state law changes. Although for the most part children's, parents', and the state's attorneys are provided by government for these important cases, the level of funding for the three parties' legal representation is unequal.

Parents and Children Generally have No Case Resources, while Massive State Resources are used to Support DSHS's Case

Parents, guardians, and legal custodians usually are not able to obtain experts or social workers to evaluate and investigate their case, while the department employs over 1,200 employees who investigate and develop the department's cases, among other job duties.

Adequate State Funding and State Oversight of Defense and Children's Representation is Recommended

With appropriation of adequate state funding for these cases, oversight can be applied to correct quality problems existing in the present system. Standards and efficiencies could be enforced through contracts or other mechanisms. As the only state agency dealing with statewide indigent defense issues, the Office of Public Defense is in a unique position to successfully implement state funding for defense representation. The Office of Public Defense or another judicial branch agency should implement state funding for children's representation.

Standards of Practice are Needed for Attorneys in Dependency and Termination Cases

Standards of practice which can be enforced by contract provisions or other means need to be implemented. OPD observers viewed mostly good defense attorneys in eight Washington counties when observing dependency and termination cases, but also saw a number of passive, obviously unprepared attorneys.

Efficiencies Should be Introduced to Reduce Wasted Time and Unnecessary Appointments of Counsel

Efficiencies such as the early establishment of paternity and statewide indigency screening can reduce the number of ineligible parents, guardians, and legal custodians receiving court appointed attorneys. Continuances should be reduced through cooperative court and counsel efforts such as case conferences.

Defense and Children's Representation Costs in Dependency and Termination Cases

Introduction

The 1999 Legislature passed Senate Bill 5744, which establishes that

The Office of Public Defense shall develop a proposal to address the costs of legal representation and expenses reasonably related to such representation of indigent parents, guardians, legal custodians, and children in dependency and termination hearings under chapter 13.34 RCW. The proposal shall address the increased dependency and termination filings by the state under chapter 13.34 RCW and the effect of this increase on indigent defense costs. The proposal shall recommend strategies to ensure that an equitable method of paying for indigent defense costs in dependency and termination proceedings is established.

The Office of Public Defense (OPD) was instituted by the 1996 Washington State Legislature to provide appellate indigent services. OPD is an independent judicial branch agency governed by an Advisory Committee. Its mission is to implement the constitutional guarantee of appellate counsel by ensuring the effective and efficient delivery of indigent appellate legal services to Washington state residents. In addition, since it is the only state agency that administers indigent defense funds, OPD has been requested by the Legislature to provide several reports on statewide indigent defense matters.

Work Method

Because funds were not appropriated to formulate this cost proposal, the Office of Public Defense performed all its research and development. Three types of research and analysis were conducted.

Observation and Interviews

Members of the OPD Advisory Committee and the OPD director visited and observed dependency proceedings in Benton-Franklin, Grays Harbor, King, Mason, Pierce, Snohomish, Thurston, and Yakima counties. By means of informal conversations and interviews with court participants during these visits, more formal meetings with groups of dependency judges, commissioners, attorneys, and guardians ad litem in Benton-Franklin and Grays Harbor counties, and the participation of a King-Pierce working group, valuable perceptions and ideas of dozens of individuals who work on dependency and termination cases from various counties were contributed to the report. During these visits and meetings, OPD observers were impressed by the deep attention and concern that juvenile court administrators and staff, as well as judges, commissioners, and attorneys, evidence for the families and children involved in dependency and termination cases.

Surveys

OPD sent a court survey to every county juvenile court requesting data about case volume, costs, and case quality considerations, and made between one and five follow-up calls to each county to obtain as complete a picture as possible. Thirty-six of the thirty-nine counties responded, although not all counties were able to provide all the information requested. A separate defense attorneys' survey was sent to dependency and termination defense attorneys in all the counties, 35 of whom responded, and OPD made follow-up discussion calls to many of them. The two surveys are located at Appendix 2.

Data Collection

Data was collected from the Office of the Attorney General (AG) on case trends, the Office of the Administrator for the Courts (OAC) on case statistics, the Department of Social and Health Services (DSHS) on case numbers, and the Washington State Court Appointed Special Advocates program (CASA) on statewide volunteer guardian ad litem costs. Recent reports on dependency and termination cases from the Office of the Family and Children's Ombudsman, the Washington State Institute for Public Policy, the Office of the Administrator for the Courts, the Office of the Attorney General, and Washington Families for Kids were also referred to extensively.

Since the Legislature directed OPD to develop an equitable cost proposal, the amount spent by the counties for defense representation and children's representation was gathered, as well as the amount spent by the state for AG in dependency and termination cases.¹ In addition, information about the quality of defense and children's representatives services from county to county was obtained in order to recommend appropriate strategies for funding representation of children and parents involved in dependency and termination cases in all counties.

Accurate Statistics Often Not Available

Obtaining consistent, accurate statistics for dependency and termination cases proved to be an obstacle. A number of counties report that they do not know how many open cases there are. In addition, counties and state agencies count dependency and termination cases for statistical purposes in different ways. RCW 13.34 specifies that a petition be filed for each dependent child. However, the Office of the Attorney General's statewide figures are not counted by number of children. Many counties count each family as one case even if there are multiple children, while others count each child as a case. Some counties do not count a termination petition as a case separate from the preceding dependency, but others do. In addition, OAC statewide dependency figures and many county caseload estimates include other types of cases (such as Becca, CHINS and At-Risk cases, which are filed under different sections of RCW Title 13).

¹ In a few smaller counties, the Office of the Attorney General contracts with the local prosecutor's office to handle dependency and termination cases.

Due to the above factors, comparing the cost and case numbers between the counties is like 'comparing apples to oranges.' In order to ascertain the amount currently spent on children's representatives and defense attorneys in dependency and termination cases, it was decided that the most accurate approach is to determine the number of 1998 open cases in each county and the amount spent in 1998 on children's representatives and defense attorneys in each county.

Indigent Parents, Guardians, Legal Custodians: Current System

Counties Provide Attorneys in Individual Ways

The U.S. Constitution and Washington law require that parents be afforded court-appointed counsel in dependency and termination proceedings, which determine fundamental child-parent relationships. In 1977, the Washington State Legislature passed The Juvenile Court Act in Cases Relating to Dependency of A Child and the Termination of A Parent and Child Relationship, RWC 13.34, which establishes that

At all stages of a proceeding in which a child is alleged to be dependent as defined in RCW 13.34.030(4), the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency as defined in chapter 10.101.RCW.

Before 1977, the responsibility for providing defense attorneys for indigent parents, guardians, and legal custodians and for providing children's representatives was assumed by the counties. Provision of indigent defense services was a component of local abuse and neglect case procedures developed in each county. With the passage of RCW 13.34, the state assumed the obligation of prosecuting dependency and termination cases. However, children's representatives and indigent defense services remained the responsibility of the counties. Over the years, each county has developed its own methods for handling dependency and termination defense. Defense representation practices vary not only with regard to how much is spent per case on defense in each county, but also as to the expectations and representation methods used by defense attorneys and courts in a given county.

Public Defenders

In some counties, defense representation is provided by public defenders. In Pierce, King, and Spokane counties, among others, dedicated staff attorneys who specialize in dependency and termination cases handle most of the county caseload. If there is a conflict between the parents, guardians, or legal custodians, a private attorney (who often has a contract with the county to take conflicts cases) is appointed.

Dependency and Termination Defense Contracts

Contracts for dependency and termination defense work are entered into in many counties. These usually establish a monthly fee, for which the defense attorney agrees to take all or a portion of the dependency and termination cases. Conflict attorneys are provided through another contract or by appointment from a list.

Indigent Defense Contract Attorneys

A third arrangement exists in a large number of counties, in which dependency and termination cases are part of one or more contracts that cover juvenile offender and dependency and termination cases or, in a number of counties, all indigent criminal defense cases. Juvenile dependency and defense cases are a percentage (often relatively modest) of the work under the contracts. These contracts are negotiated on a one or multiple year basis for all the indigent defense cases in the county. Conflict attorneys are often selected pursuant to a second contract or from a list of attorneys who have requested appointments.

List Attorneys

In other counties, all dependency and termination defense attorneys are appointed from lists and paid an hourly or flat fee for each case. Attorneys sign up for the list and the court makes appointments on a case-by-case basis.

Most Defense Attorneys Receive Below Market Pay for these Cases

The process for obtaining an indigent dependency and termination defense contract varies from county to county. Many contracts are negotiated and bid by county management. The counties report that, for these types of contracts, required qualifications are sometimes minimal, with no experience or qualification requirement other than bar membership. Non-lawyers select the attorneys and award the contracts. In many counties, contracts are given to the lowest bidder. In other counties, the court either manages or has input in the contract procurement system, and experience may be required to qualify for a contract.

Indigent defense cases in general, including contract cases, usually are paid at rates considerably below the private attorney market. For example, Pierce, Spokane and Lincoln counties pay \$40 per hour for dependency defense, Snohomish pays \$63 per hour, Mason pays \$35 per hour, Stevens pays \$70 per hour, and King pays \$33 per hour for conflicts attorneys. Private attorneys in these counties may charge private clients from \$100 per hour to \$200, and face overhead costs for rent, clerical work, supplies, etc., at an average of \$2,500 to \$3,500 per month.² Many cases are paid on a flat fee basis set for the entire case, no matter how many hours are actually spent on the representation. For example, Kitsap pays \$648 per dependency defense, while Kittitas pays \$400. Many counties contract with attorneys to provide all defense services, or a set portion (such as half or one-quarter,) for the county's dependency and termination cases. For example, Benton-Franklin pays \$3,573 per month, and Grays Harbor pays about \$3,000 per month. King County compensates public defenders on a credit system, paying more for cases involving more complex procedures.

² Results of a statewide survey reported by Washington State Office of Public Defense, *Defense Fees and Costs in Washington State Appellate Death Penalty Cases*, 1998.

Eastern Washington attorney: "These cases are universally time-consuming, and the pay is very inadequate."

Western Washington attorney: "I believe the amount paid for dependencies is ridiculously low. When you compare the experience and the issues that are involved in a dependency with those involved in most criminal cases, the complexity of juvenile practice is far greater and more consuming of time."

Eastern Washington attorney: "In smaller counties...you call on private law firms to give up \$120-\$150 per hour billable time and pay them ½ of their normal rate to do this thankless job. With the increase in our monthly costs, there needs to be some way to adequately pay for the work. Otherwise, inexperienced, unqualified attorneys who can't make a living in private practice will be all that is left to represent these parents. . . ."

Caseloads also vary widely. For example, private attorneys who do take dependency and termination cases on a part-time basis report caseloads of 3 and up per year; at the other extreme, some attorneys report up to 275 cases per year. For both contract and list appointed private attorneys, the low level of pay and high caseloads attorneys are expected to handle can result in passive representation, burnout, and high turnover in some counties.

Western Washington attorney: "Even with the caseload limits we have, attorneys work most weekends. Given the changes in the rules which require more written advocacy, and the number of additional hearings (i.e. termination pre-trials), caseloads are too high."

Eastern Washington attorney: "Caseloads are too high, thus little time to research alternatives, meet with clients, etc."

Several survey respondents noted that dependency and termination cases are often given to new, inexperienced attorneys in their counties who 'cut their teeth' there before moving into criminal caseloads after a year or two. However, in other counties, attorneys and courts report that very experienced attorneys represent indigent dependency and termination parents, guardians and legal custodians.

During visits to Benton-Franklin, Grays Harbor, King, Mason, Pierce, Snohomish, Thurston, and Yakima counties, the OPD director and Advisory Committee members viewed shelter-care, fact-finding, and review hearings in juvenile courts. A wide range of defense practices and court procedures were observed that impact the quality of dependency and termination defense representation.

Dependency and Termination Defense Quality Factors

If the right to counsel is to be meaningful, defense attorneys must have sufficient time and motivation to prepare adequately and have the skills and experience to perform competently in court. Attorneys and courts were asked about attorneys' ability to provide effective defense services, and several proceedings were observed at each of the eight courts visited.

Both Adversarial and Agreed Representation are Required

Dependency and termination attorneys and court officials in all counties often remark that most issues are resolved by agreement in these cases. Various courts responding to OPD's survey report that between 60% and 90% of dependency hearings result in agreed orders. Most defense attorneys responding to OPD's survey ranked facilitating settlements as an 'important', or 'very important', defense attorney function. These same attorneys often likewise ranked adversarial representation as 'important' or 'very important.' Judges and commissioners indicate that good defense attorneys' caseloads are a healthy mix of representing their clients adversarially when appropriate and advising parents, guardians, or legal custodians how to best work with the department to obtain parenting skills services when the facts clearly warrant such an approach.

Terminations are much less likely to be agreed. Some courts estimate that up to 100% are contested, due to their drastic nature, and attorneys note that settlements are often against the parents' interests in termination cases. The overwhelming majority of defense attorneys responding to the survey evaluated the importance of adversarial representation in termination cases as 'most important.' However, facilitating settlements in appropriate termination cases was also ranked as 'important.'

A western Washington attorney notes that when representing parents who are agreeing to terminations, his role is "protecting parents' rights within this proceeding and other possible related proceedings, helping parents let go, (and) facilitating a farewell or reunion plan."

Few Case Resources are Available to Defense Attorneys

Any observer of dependency hearings soon notices that while the state's case is based on the work of full-time state social workers and, often, contracted experts such as doctors and psychologists, attorneys representing parents, guardians, and legal custodians generally have no social workers to investigate the facts or experts to independently analyze the state's assertions. In answer to a general survey question asking for remarks on factors that impact dependency defense, many attorneys reported that the lack of equal resources is a fundamental problem:

Eastern Washington attorney: "There needs to be more funding at all stages, and independent experts not dependent upon the department for payment."

Western Washington attorney: "There is not enough funding for experts. We have difficulty getting qualified experts given what (the county) will authorize."

A large number of counties do not ever provide independent social workers or experts to the defense; although it should be noted that defense attorneys in some of these counties report that they have never requested them. About half of the surveyed attorneys report that they obtain defense expert services only occasionally or rarely. In consequence, the court often only hears the investigative facts and expert opinions of one party, the state.

Even when expert services for the defense are authorized, attorneys and judges in a number of counties are concerned that the experts available are not unbiased. Defense attorneys often are required to select experts from a limited list, frequently including of professionals who have contracts with DSHS. Attorneys from several counties as well as commissioners describe incidents of experts who regularly perform evaluations for DSHS refusing to carry them out for the defense or doing so in a manner that seems less than objective.

About 30% of the counties polled about their expert services practices report that no expert funds are available to the defense. The other 70% report a limited amount of expert funds, which are seldom granted (for most counties responding, in less than 10% of the cases.)

Eastern Washington attorney: "Availability of resources is a huge problem. We have little, if any, alternatives to the State's preferred providers."

Eastern Washington attorney: "Need access to independent experts, investigators, social service planners - and available funding to provide these. Currently defense counsel is severely hampered by the necessity of relying on the State's contracted experts and/or employed social workers."

DSHS Workers Contribute Enormous Numbers of Hours to State's Cases

The 1998 Office of the Attorney General Termination and Guardianship Audit indicates that in FY 1997, there was a total of 1,268 social workers and supervisors working for the Division of Children's and Family Services. These social workers staff dependency and termination cases in addition to performing other job duties. DSHS social workers who investigate cases are also active employees of the department that recommends legal action against the parents, guardian, or legal custodians. The impact of social workers' contributions to these cases cannot be overstated. During regularly scheduled dependency and termination dockets, OPD observers often saw three to eight social workers waiting in court to testify for their cases. Parents, guardians, and legal custodians against whom they were testifying had no equivalent case support.

In addition to the tremendous number of state social worker hours spent developing facts and evidence for these cases, the AG budget for dependency and termination cases included a dedicated fund totaling \$324,803 in 1998 for experts.³ Often the facts are clear-cut in dependency and termination cases and having defense access to investigators and experts would probably not make a difference in the outcome of a case. In cases that are disputed, however, parents, guardians, and legal custodians may be literally unable to refute departmental allegations due to their lack of these resources.

³Correspondence from Office of the Attorney General, November 1998.

Western Washington attorney: "Funding needs to include social work services! And other professional services, too, but in-house social workers are key."

Eastern Washington attorney: "No investigator/social worker staff has been funded for dependency [defense] cases."

Western Washington attorney: "It would assist in terms of an economical utilization of time if defense had access to a defense social worker in order to develop alternative programs and explore the efficacy of those programs being offered by the state...at the present time, these services and plans are almost entirely within the dominion of the Department of Social and Health Services."

Number of Defense Attorneys Appointed

More than one defense attorney is appointed in many dependency and termination cases. RCW 13.34 confers the right to counsel on each parent. This is important in dependency and termination cases because many parents have never been married to each other or are divorced,⁴ and others have significant conflicts of interest and therefore are appointed a separate 'conflicts' attorney by the court.

Married Parents Often Have Conflicts

In at least seven counties, including Pierce, King, and Mason, separate attorneys are automatically appointed to represent each married parent in every case, even if they are living together. Separate counsel are seen as a necessity because of the real or potential conflicts between the parents, one of whom has often allegedly been violent against the child and may be asked to move out of the house. Defense attorneys point out that it is difficult to communicate well with a couple enmeshed in a cycle of family violence and dominance which often extends to conversations in the lawyer's office. In most of the remaining counties, one attorney is appointed for married parents who live together, unless a conflict develops, in which case the attorney withdraws from representing one or both of the parents and one or two new attorneys are appointed.

Western Washington attorney: "I can't even begin to estimate the number of cases where the parents seem to be in agreement, but within a short time become diametrically opposed to one another... clients are frequently unwilling to disclose what is happening in their household (i.e. domestic violence or physical abuse) in front of a spouse, but they will tell me in private (as long as) I can promise not to disclose the information to their spouse."

⁴Juvenile Court Administrator survey respondents estimate that only an average of about 25% of parents in dependency and termination cases are married to each other.

Time Elements

Attorneys Preparation Time Varies from Adequate to Little or None

In addition to the hours they spend in court, defense attorneys need to prepare adequately in order to represent their clients effectively. The amount of time spent preparing for cases varies from defense attorney to defense attorney. Of the contested hearings observed in Benton-Franklin, Grays Harbor, King, Mason, Pierce, Snohomish, Thurston, and Yakima counties, many defense attorneys appeared to be prepared, active, and conscientious advocates for their clients. They seemed familiar with the files, including DSHS social worker and experts' statements, appeared to have consulted with witnesses before the hearings, asked apt direct examination questions, and were organized and effective cross-examiners. However, a significant minority of the defense attorneys observed seemed unprepared and were less effective advocates. Some appeared to be interviewing the parents or guardians during the proceeding at counsel table and seemed to be unfamiliar with the contents of DSHS reports. They called few witnesses and added little new information.

The defense attorney survey indicates that attorneys spend varying amounts of time preparing for dependency hearings. At the low end, several private contract attorneys reported caseloads that allowed them to spend only an average of less than 9 hours per case per year. Other attorneys' caseloads allowed an average of 18 or more hours per case per year. Some public defender offices such as those in King County try to keep caseloads at about 85 per attorney, which allows an average of about 25 hours per case per year.⁵

Preparation activities vary from attorney to attorney. Most defense attorneys say they interview their clients before a contested dependency or termination hearing. However, 40% say they only occasionally investigate into alternative services that might be provided to the child or family before uncontested hearings, and only one-third report writing motions or briefs for dependency and termination cases on a regular basis.⁶ The low number of paid hours funded by the current fee systems used in many counties penalize attorneys financially who spend more preparation time on cases.

Western Washington attorney: "(We) need experienced attorneys who actually WANT to do this work, and that means paying better. Clients are getting great service from some attorneys, no service from others."

⁵These yearly averages include new dependency actions and termination trial cases, both of which include labor intensive proceedings that can require 40 to over 100 hours, as well as older, less active cases which may require only a few hours per year.

⁶In contrast, the Office of the Attorney General expects an assistant attorney general to submit written trial memorandums for termination cases as part of their minimum preparation standards. Office of the Attorney General, *Termination and Guardianship Audit*, 1998, p.28.

Court Time Required of Defense Attorneys is Substantial

In most counties, a specific court time each month or week is set aside for juvenile dependency and termination matters. For example, Grays Harbor County dependency and termination hearings are regularly scheduled for Tuesdays, and Benton-Franklin hearings are regularly held on Thursdays. Shelter care hearings, which must be held within 72 hours of the child's removal from the home, are held on these days if possible, as well as dependency fact finding hearings and review hearings. Contract attorneys are usually present in court on these scheduled juvenile court days. On the other hand, the dependency docket can require contract attorneys to spend most of the time scheduled for dependencies and terminations sitting in court until his or her cases are called. Scheduled court days are typically used as a forum for productive case negotiations between defense attorneys, children's representatives, and the assistant AG or prosecutor. But unproductive time can be a problem during dependency and termination court days.

An Eastern Washington attorney notes that attorneys can lose income due to the "extreme financial waste in courtroom and docket waiting around," on dependency and termination docket days.

Shelter care, dependency fact-finding hearings, and termination trials are often scheduled on additional days and may be held in superior rather than juvenile court. These can be lengthy; termination trials in particular frequently require several court days.

Continuances are Common

Delayed hearings which are set over to another date or 'continued' appear to be a chronic problem in a number of counties. While survey respondents reported an average of 23% of review hearings and 26% of termination hearings are continued in their counties, some county juvenile courts estimate that continuances are granted in up to 80% or more dependency and termination hearings.

Other counties report that 10% or less of scheduled hearings are continued. These counties generally have formal or informal case conference policies. For example, Island County reports that a new continuance dependency policy has resulted in fact-finding continuance rate dropping from 70% to 20% as a result of scheduling fact-finding hearings right after shelter care hearings. A number of other courts have recently examined court scheduling delays formally or informally. In 1998, Snohomish and King County juvenile courts completed federally funded Court Improvement Projects as part of a program managed by OAC that have resulted in a significant continuance rate drop in each county. Both projects achieved the reduction in case delay through case management and pretrial conferences. Pierce County has just begun a similar project.

Court observers note the deep disappointment parents, guardians, legal custodians and teenage dependent children who are present in court experience when hearings are put off for several weeks or months, a typical continuance delay period. Parents who have made diligent efforts to meet the court's requirements are very frustrated when the goal they have been working toward is delayed. The most common reason for continuances cited by defense attorney survey respondents is the state's failure to provide documents before the hearing. Defense

attorney scheduling conflicts (being scheduled for two different court hearings at the same time as a result of high caseloads) is a close second.

Delayed Resolution of Dependency and Termination Cases

Delays in resolving dependencies and terminations prior to recent law changes have contributed to large open dependency and termination caseloads in many counties. DSHS case figures indicate that in some counties, the number of dependency and termination open cases may be far greater than the number opened or closed during the year. For each open dependency case, review hearings must be held at least every six months. In active cases, generally 4 or more hearings occur in one year under RCW 13.34.130(7). Among other problems, cases with delayed closure require many extra hours of defense attorney time.

Paternity Needs to be Established Early

In many counties, a child's paternity has not yet been established in as many as 10 or 15% of the cases. If there is more than one possible father, both are afforded the right to counsel at public expense. Publicly financed defense counsel for two possible fathers often continues until the paternity of one is established by the prosecutor's office. This may not happen until far into the case. Early paternity establishment has been noted as a feasible efficiency by court commissioners, and was cited as a goal in both the 1998 Office of the Attorney General's Termination and Guardianship Audit and the Permanency Oversight Committee, Washington Families for Kids' Washington Permanency Framework report in 1999.

Indigency Screening is Required

RCW 13.34.000 confers the right to counsel upon parents, guardians, or legal custodians of a child, subject to RCW 10.101, which establishes that a determination of indigency must be made in all dependency and termination cases. However, it appears that almost 20% of the counties are not following RCW 10.101's requirement that an indigency screening be performed in these cases using the state determination of indigency form published by OAC. Most counties report that a very high percentage of parents, guardians, and legal custodians are found indigent, up to 99% in some counties, and all agree that the overwhelming majority of parties in dependency and termination cases are indigent. However, it is possible that through requiring parents, guardians, and legal custodians to file applications for indigency determination using the state form, counties could avoid appointing defense counsel for a modest percentage of parties who are not truly indigent.

Current Cost of Defense Attorneys

Judges, commissioners, the Office of the Attorney General, and defense attorneys have concluded that defense representation is underfunded. The impacts are felt in all aspects of the system, including defense attorneys' reduced ability to deliver quality representation and the presence of frequent scheduling delays, and is a major obstacle to the counties' ability to comply

with the accelerated filing timeframes imposed by RCW 13.34 and the Adoption and Safe Family Act (ASFA).

The 1998 cost of defense representation, as provided by the counties, is outlined in the following table. DSHS reports that 9,085 petitions for children resulted in cases that remained open statewide on December 31, 1998. The county open case totals were provided by DSHS. These numbers do not include guardianships or voluntarily placed children. County budget totals were provided by the individual counties.

Of the counties with reported budgets, the 1998 statewide average cost of dependency and termination defense per case was \$568. In reality, average defense payment per representation of parents, guardians, and legal custodians is substantially lower than the average payment, because two or more defense attorneys are appointed for many cases. Assuming conservatively that two defense attorneys are appointed for 30% of the open dependency and termination cases statewide, the real statewide average payment per defense representation was about \$398.

DEFENSE REPRESENTATION COSTS IN 1998

County	Type of Representation (in addition to Conflicts Attorneys)	Dependency/ Termination Budget	# of Open Cases on 12/31/98	Avg. Cost per Case in 1998
Adams	Indig. Defense Contract	\$5,000	19	\$263
Asotin/Columbia/Garfield	Indig. Defense Contract	\$30,000	37	\$810
Benton/Franklin	Dep/Termin. Contracts	\$136,981	203	\$674
Chelan	Missing	Missing	84	--
Clallam	Public Defender	\$60,284	116	\$519
Clark	Dep/Termination Contracts	\$130,000	309	\$420
Cowlitz	Juvenile Contract/ List Attorneys	\$78,829	207	\$380
Douglas	Indig. Defense Contract	\$25,000	25	\$1,000
Ferry	Missing	\$6,750	17	\$397
Grant	Indig. Defense Contract	\$50,000	83	\$602
Grays Harbor	Dep/Termin. Contracts	\$76,800	173	\$443
Island	Indig. Defense Contract	\$5,860	102	\$57
Jefferson	Public Defender/ Contract/List	Missing	42	--
King	Public Defender	est.\$2,024,400	2,531	\$799
Kitsap	Dep/Termin. Contracts	\$303,929	491	\$619
Kittitas	List appointments	\$13,500	35	\$385
Klickitat	Indig. Defense Contract	\$10,000	24	\$416
Lewis	List appointments	\$61,250	251	\$244
Lincoln	List appointments	\$5,000	13	\$384
Mason	Dep/Termination Contracts and List	\$75,658	102	\$741
Okanogan	Indig. Defense Contract	\$18,000	47	\$382
Pacific	Indig. Defense Contract	Missing	44	--
Pend Oreille	Dep/Termin. Contracts	\$22,500	30	\$750
Pierce	Dep/Termin.Contracts/ Public Defender	\$547,235	1,126	\$485
San Juan	Missing	Missing	10	--
Skagit	Dep/Termin.Contracts/ Public Defender	\$36,000 + unknown amt.	112	--
Skamania	Indig. Defense Contract	\$14,117	13	\$1,086
Snohomish	Dep./Termin. Contracts	\$633,105	946	\$777
Spokane	Public Defender	\$380,000	815	\$466
Stevens	Indig. Defense Contract	\$15,000	53	\$283
Thurston	Dep/Termin. Contracts	\$104,070	294	\$354
Wahkiakum	Missing	Missing	7	--
Walla Walla	Indig. Defense Contract	\$12,000	71	\$169
Whatcom	Public Defender	\$124,905	120	\$1,040
Whitman	Indig. Defense Contract	Missing	32	--
Yakima	Public Defender	\$154,000	499	\$308

The second column lists the major funding mechanism used; each county provides conflicts attorneys as well. The third column lists the total amount spent by the county on dependency and termination cases (some totals are estimates provided by counties.) The fourth column lists the county's number of open cases, one per child, for which legal hearings are required at least periodically. The fifth column average case costs were calculated by dividing each county's total dependency and termination budget by the number of open cases on December 31, 1998.

Children's Representatives: Current System

RCW 13.34 mandates that a representative be appointed for the child in dependency and termination cases. Washington is the only state that has a 'good cause' exception to this requirement, which is used in some larger counties as a basis for declining to appoint a representative for about one-third of all children involved in dependencies and terminations in Washington.⁷ In the remaining counties, a representative is appointed for each dependent child. The counties implement the children's representative requirement either by appointing an attorney or non-attorney guardian ad litem to represent the 'best interests of the child,' or an attorney to represent the child's wishes.

CASA Volunteers

At least twenty-five of Washington's 39 counties have Court Appointed Special Advocate programs. Volunteers who are recruited, trained, and supervised locally are appointed to investigate and represent in court the best interests of the child. They perform extensive amounts of research and interviewing and usually have very low caseloads, often consisting of only one or two cases. CASAs are volunteers but most counties provide paid staff support services, which usually are paid partly or in full by state funds.

In a number of counties, attorneys are appointed to represent the CASA volunteer in difficult adversarial cases. It is generally accepted that in a hotly contested hearing, a CASA volunteer would be ill-equipped to provide attorney-type representation for the child. These attorneys may act as advisors and/or supervisors as well. In some counties, non-attorney staff supervise CASA volunteers.

Appointed Paid Guardians ad Litem (GALs)

Some courts appoint private GALs to represent the best interests of the child. Usually these are private attorneys who often, but not always, have a contract with the county. Social workers are appointed as GALs as well in a few counties.

Staff GALs

Some counties employ probation officers, juvenile court workers, or full-time guardians ad litem who are appointed to represent the best interests of the child. As concluded in the 1998 Office of the Family and Children's Ombudsman's report, these guardians ad litem often have high caseloads. Sometimes they supervise CASA volunteers in addition to carrying a caseload.

Children's Attorneys

Some counties appoint attorneys for children in dependencies who represent the child's wishes rather than the best interests of the child. These attorneys usually are appointed to represent older children, and often have a contract with the county, although some are appointed from local lists.

⁷Office of the Family and Children's Ombudsman, *Report on Guardian Ad Litem Representation of Children in Child Abuse and Neglect Proceedings*, 1999.

Representation of Children in Court

OPD observers saw a variety of children's representatives in dependency proceedings in Benton-Franklin, Grays Harbor, King, Mason, Pierce, Thurston, Snohomish, and Yakima counties. A number of attorney and non-attorney guardians ad litem were observed. Overall, CASA guardians ad litem appeared to be prepared for the hearings in which they participated. Attorneys were present to represent the CASA guardians ad litem for several contested hearings in some counties, and appeared to have an impact as a second voice for the child.

Attorney guardians ad litem's apparent familiarity with their cases and independent representation of their dependent child clients was varied. Some attorneys appeared to have conducted extensive investigations, presented detailed reports and recommendations, and contributed vigorous oral advocacy on behalf of their clients, sometimes asking for more protection for the child than the department. In other courts, attorney guardians ad litem were silent throughout their scheduled hearings except to advise the court that they had no questions of any party. Some asked few questions and consistently echoed the states' position in every case.

These observations concur with recommendations made in recent state reports, discussed below. While attorney guardians ad litem can be excellent advocates for their clients, in the present system, some of the attorneys performing the work do not appear to devote an adequate amount of time to their cases. Overly high caseloads and flat fees, whether paid per case or month, which are used in many counties can cause attorneys to spend a minimal amount of time on their cases because the same amount is paid regardless of the quantity or quality of the work.

State Reports Recommend CASA Volunteer GALs as the Preferred Model

During the past two years several important state reports have examined the role of children's representatives in dependency and termination cases.

Office of the Administrator for the Courts Report Recommends the Appointment of a CASA for Every Child and State Funding Support

After a committee consisting of statutorily mandated members appointed from affected courts, agencies and groups met for approximately one year to discuss complex guardian and guardian ad litem issues, the Office of the Administrator for the Courts wrote a comprehensive training curriculum and examined the efficacy of CASA guardians ad litem. Due to CASA volunteers' consistently high quality representation of children in dependency and termination, the OAC report recommends that a CASA guardian ad litem be appointed for every child and that the state appropriate funds for basic support of the CASA program.⁸

⁸Office of the Administrator for the Courts, *Guardian Ad Litem Project Final Report*, 1997.

Washington State Institute for Public Policy finds CASAs an Effective and Relatively Inexpensive Method of Providing Children with Representation

In 1997, the legislature authorized a \$600,000 appropriation for a contract between the Washington State Association of CASA/GALs and CTED for pilot projects in three counties. In 1999, the legislature increased the CASA/GAL appropriation to \$1,000,000. As part of the original appropriation, the Washington State Institute for Public Policy wrote an evaluation, finding that CASA guardians ad litem are effective, spend about 30 hours per case, and cost about \$500 per case per year.⁹

Office of Family and Children's Ombudsman Recommends more CASAs and State Consideration of Additional CASA Funding

In January 1999, in response to complaints about the lack of children's representatives in some dependency cases, the Office of the Family and Children's Ombudsman issued its report concluding that no guardian ad litem is appointed in about one-third of Washington's dependency cases, that guardians ad litem should be appointed for all children involved in abuse and neglect cases, that state policy makers should consider funding an establishment or increased caseload of local CASA programs, and that counties with staff GALs should review existing cases and reduce overly high caseloads.

Washington Permanency Framework Report Recommends a CASA for Every Out-of-Home Dependent Child

The Washington Permanency Framework, a Washington Families for Kids committee whose oversight committee includes legislative members, a justice, judges, representatives from the Attorney General's office, DSHS, and private charity officials, also issued a report in January 1999 which establishes the foundation for a five year plan for ensuring foster children of permanent families. Among many recommendations made to address children's need for permanent families, the report cites the need for a CASA/GAL for every dependent child in out-of home placement.¹⁰

A few counties have not instituted CASA volunteer guardians ad litem because attorneys are deemed better representatives for a variety of local reasons, and many counties appoint some attorney guardians ad litem. The courts in these counties maintain that attorneys provide the appropriate type of representation in dependency and termination cases. As stated above, OPD observations in court indicated that most attorneys are performing their guardian ad litem duties competently, but a substantial minority seem less effective.

The following chart shows statewide children's representative costs in Washington counties in 1998 for 9,085 children in dependency and termination cases, according to DSHS reports. Of the counties with reported budgets, the statewide average children's representative cost to the county was \$575. Actual average case payments may higher because only about 2/3 of children involved in dependencies or terminations have legal representatives. As stated above, CASA volunteers cost about \$500 per case per year.

⁹Washington State Institute for Public Policy, *Court Appointed Special Advocates for Children in Washington State: A Review of Effectiveness*, 1998.

¹⁰Permanency Oversight Committee, Washington Families for Kids, *The Washington Permanency Framework*, 1999.

CHILDREN'S REPRESENTATION COSTS IN 1998

County	Type	Other Type	Children's Represent. Budget	# of Open Cases on 12/31/98	Cost per Case
Adams	Attorney GAL		\$2,500	19	\$131
Asotin/Columbia/Garfield	Missing	Missing	Missing	25	--
Benton/Franklin	CASA	Children's Attorney	\$251,699	203	\$1,239
Chelan	CASA		\$24,000	84	\$286
Clallam	CASA	CASA Attorney	\$108,359	116	\$934
Clark	CASA	CASA Attorney	\$100,000	309	\$324
Cowlitz	CASA	Children's Attorney	\$5,000	207	\$24
Douglas	CASA	CASA Attorney	\$34,000	25	\$1360
Ferry	Attorney GAL		\$13,500	17	\$397
Grant	CASA		\$30,000	83	\$361
Grays Harbor	Attorney GAL		\$135,708	173	\$784
Island	CASA	Children's Attorney	\$42,574	102	\$417
Jefferson	CASA		\$22,410	42	\$534
King	CASA	Children's Attorney	\$1,810,100	2531	\$715
Kitsap	CASA	Staff GAL	\$286,008	491	\$583
Kittitas	CASA		\$13,080	24	\$545
Klickitat	Attorney GAL		\$5,000	35	\$143
Lewis	CASA	Children's Attorney	\$264,450	251	\$1,054
Lincoln	Attorney GAL		\$5,000	13	\$385
Mason	Staff GAL	Attorney GAL	\$30,000	102	\$294
Okanogan	CASA	Staff GAL	\$88,013	47	\$1,872
Pacific	Staff GAL		Missing	44	--
Pend Oreille	CASA	Attorney GAL	\$23,000	30	\$767
Pierce	CASA	Staff GAL - Children's Attorney	\$800,652	1,126	\$711
San Juan	CASA		\$400	10	\$40
Skagit	Missing	Missing	Missing	112	Missing
Skamania	Attorney GAL		\$5,000	13	\$385
Snohomish	CASA	CASA Attorney	\$633,106	946	\$669
Spokane	CASA	Attorney GAL/Staff GAL /Children's Attorney	\$446,600	815	\$548
Stevens	Attorney GAL		\$15,000	53	
Thurston	CASA	Attorney GAL	\$61,000	294	\$207
Wahkiakum	Missing	Missing	Missing	7	--
Walla Walla	CASA	Attorney GAL	\$10,000	71	\$140
Whatcom	Non-attorney GAL		\$75,906	120	\$632
Whitman	Missing	Missing	\$15,000	32	\$468
Yakima	CASA	Children's Attorney/Staff GAL	\$186,526	499	\$373

The primary type of representative is listed in the second column. Other types of representatives appointed are listed in the third column. The children's representation total budget, listed in the fourth column, includes county funds, state CASA funds, and donated private funds, if any, but does not include in-kind donated funds such as rent or volunteer staffing (some totals are estimates provided by the counties.) The fifth column shows the number of open cases on December 31, 1998, according to DSHS statistics. The sixth column shows, for comparison purposes, the county's average children's representative cost during 1998 for the number of cases that were open on December 31, 1998.

Increased Dependency and Termination Filings by the State and their Effect on Indigent Defense Costs

New Dependency and Termination Laws Impose Accelerated Requirements

The 1997 Adoption and Safe Families Act was Congress' response to the lingering of thousands of children nationally in foster care while state courts processed their cases. ASFA requires that permanent homes be found for children, establishes a permanency planning hearing requirement within 12 months of the child's first day in foster care, and imposes a requirement that a termination of parental rights petition be filed within 15 months of the beginning of foster care unless the child is living with relatives, the child welfare agency has been unable to deliver services to the family, or the supervising agency has concluded it is in the child's best interest to maintain the family relationship.

In 1998, the Legislature adopted amendments to RCW 13.34 setting new permanency planning and termination limits for Washington cases. Washington's 1998 requirements impose a short timeframe, requiring permanency planning hearings within twelve months for children under ten and eighteen months for children over ten. Terminations must be initiated with fifteen months of the beginning of foster care.

Dependency and Termination Filing and Closing Rates

The Attorney General reports that dependency filings increased substantially after 1994, but that as of September 1999, dependency figures have become stable statewide but vary significantly from county to county.¹¹

Dependencies More Complex

However, while statewide filings are not now increasing, judges, court commissioners, defense attorneys, and the Office of the Attorney General reports that the difficulty of the filed cases has increased, and that those cases are more time consuming and complex. Defense attorneys from a number of counties report that over the past five years, the number of dependency hearings has multiplied. The increase in complexity is largely due to more dependencies and terminations based on substance abuse over the last decade and to the greater length of time dependent children spend in foster care, which is thought to indicate their level of emotional and behavioral problems.¹²

Changes based on the RCW 13.34 amendments and ASFA require counties to shorten timeframes for dependencies in order to meet the required accelerated termination filing dates. Dependency fact finding and review hearings are set earlier so permanency planning can be achieved earlier. Consequently, dependencies are becoming more intensive under the new laws.

¹¹Correspondence with Office of the Attorney General, October and November 1999.

¹²Office of the Attorney General, *Termination and Guardianship Audit*, 1998.

In addition, as observed by defense attorneys, the presence of active children's representatives appropriately increase the number of time each hearing takes and the complexity of the cases.

Western Washington Juvenile Court Administrator: "There are many more hearings. The system is out of balance as DCFS and the AAG increase staffing levels. The other players, i.e. (the public defender) and GALs do not."

Eastern Washington Juvenile Court Administrator: "We have shortened timeframes in which parents must engage in needed services and demonstrate progress. As a result, cases are reviewed more frequently. More hearings are held with all parties spending significantly more time preparing for and attending court hearings."

Western Washington Juvenile Court Administrator: "There's been a steady increase, but the workload is different now...lawyers in court don't have time for preparation."

Termination Filings Increase Considerably

Filings, closings, and the number of open termination cases began climbing in 1997, apparently initially as a result of a successful court initiated reduction of the case backlog in King County in 1997. That year, 802 termination cases were opened statewide, 198 more than the 604 opened statewide in 1996. This represented a 25% increase over the previous year. In 1997, the number of closed termination cases increased by 10%.

The higher rate of termination case openings and closings statewide increased further in 1998, with an additional 9% of terminations filed. Termination closings increased by 12%. The 1999 trend so far is for a slightly decreased filing rate, a slightly increased closing rate, and a fairly stable open case rate. However, additional counties are presently beginning to feel the crunch of the new state termination requirements under RCW 13.34 and ASFA. New AG data indicates that 1999 termination filings in its Everett and Spokane regional offices are up about 11%, in its Vancouver and Tacoma regional offices about 14%, and in its Yakima regional office about 30%.¹³

New Terminations More Difficult

The requirements of ASFA and the 1998 RCW 13.34 amendments have made termination cases harder to prepare and close. Parents whose relationships with their children are being expeditiously terminated are more likely to contest, especially if they feel they have not had enough time to improve their parenting skills. As dependency and termination case numbers and difficulty have increased, county costs have increased in many counties but often do not keep up with the case increases. For example, due to a backlog of cases in Pierce County, DSHS instituted a new 'fast track' system there to close cases. New AG staffing levels for the Tacoma AG's office, which handles cases in Kitsap and Pierce Counties, are 26 attorneys, legal assistants, paralegals, and clerks. In contrast, the Department of Assigned Counsel, which manages all dependency and termination defense counsel for Pierce County, consists of only 6 attorneys and paralegals.¹⁴ When DAC requested 3 more attorneys and paralegals in October 1999 to cope with the new termination caseload, they were turned down by the county due to a lack of funds.

¹³Percentages based on data from correspondence with the Office of the Attorney General, December 1999.

¹⁴Pierce County Department of Assigned Counsel, "Supplemental Budget Request," 1999.

Need for More Funding to Cope with Terminations

The accelerating caseload in many counties puts enormous pressure on defense attorneys who are not able to keep up with the state-imposed workload. In Yakima County, for example, defense attorneys and court representatives report that it is difficult to move termination trials forward because defense attorneys' schedules are overburdened with emergent new dependency filings. Some counties have managed to fund substantial increases in response to the new caseload requirements. For example, Snohomish increased dependency and termination funds by 20% over 1998 levels during the first six months of 1999, Benton-Franklin increased its dependency and termination budget by 20% for 1999, and Spokane increased spending by 13% in order to add another FTE to handle termination filing increases. Many other counties, including ones that have seen termination filing increases, have not yet been able to implement additional funding.

In recognition of the shortage of defense attorneys and the consequent barriers to efficient prosecution of these cases, the Office of the Attorney General adopted a recommendation in support of defense bar staffing in its 1998 Guardianship and Termination Audit, recommending that "(t)he AGO should be willing to support the addition of more defense attorneys where appropriate."

State AG Budget Outstrips Funding for Parents and Children's Representatives

The 1998 amount spent by the Office of the Attorney General for dependency and termination cases, including attorney and paralegal staff and contracts with prosecutors to handle cases in the smaller counties, was \$10,342,398. This amount does not include DSHS social worker costs for working on these cases.

The 1998 statewide total spent on dependency and termination defense is \$5,160,173 - about half the AG budget.¹⁵ This amount has to be stretched to pay for probably 30% or more cases than the AG budget, since separate attorneys are appointed for the parents of many children. No social worker funds are available for most of the defense cases.

In 1998, children's representatives were paid an estimated \$5,220,860 - about half the AG budget.¹⁶ There have been some budget increases in the last year, primarily from the distribution of state CASA funds. Only about 2/3 of all children have legal representatives.

¹⁵ This amount is the total reported by the counties to have been spent for 97.5% of the cases in 1998.

¹⁶ This amount is the total reported by the counties to have been spent on children's representation for 98% of the cases in 1998.

1999 Legislature Appropriates Attorney General Additional Termination Funds

As a response to the increased termination filing demands, the 1999 Legislature appropriated as a Policy Item an additional \$1,876,000 to the Office of the Attorney General for the Children and Family Service Project:

Funding is provided for legal services staff to address the 47 percent increase in the number of parental rights termination cases referred to the Attorney General's Office between 1994 and 1997 from the Department of Social and Health Services. The average time to file a parental rights termination case will be reduced from 90 to 45 days from referral. (Legal Services Revolving Account.) *Legislative Budget Notes, Senate Ways and Means Committee, 1999 Legislative Session*

Since at this juncture most counties are not in a position to fund increases for defense attorneys and children's representatives to respond to this additional funding measure, the existing funding gap between the state and the parents and children in termination is presently greater than in 1998.

Recommended Strategies to Ensure an Equitable Method of Paying for Indigent Defense Costs

Though an indigent parent or child involved in a dependency or termination case in Washington is afforded publicly paid representation pursuant to the U.S. Constitution and Washington laws, that representation is funded at substantially less than half the level of the state's representative in these cases.

Moreover, if the child and parent's case is located in certain counties, funding for their representatives may equal \$300 each or less, despite the fact that dependencies lead to terminations and the Supreme Court has deemed these cases as being, along with death penalty cases, the most important and significant decision rendered in a court of law.

Juvenile dependency and termination case funding is in crisis. While children and their parents are afforded competent representation in some counties, in others it appears that caseloads are so high and pay so low that effective representation is not available. Recent increases, which appear to be continuing, have exacerbated the deficiencies of the present system. The state appropriately has dedicated very substantial DSHS and AG funding to these important cases, but parents' and children's ability to respond is dwarfed by their relatively small resources.

An equitable cost proposal for dependencies and termination should include the following strategies:

GENERAL

- 1. State Funding:** In order to correct widespread inequalities of funding for children's representatives and defense attorneys, and because these important cases are ably and vigorously litigated with substantial state resources by the Attorney General and the Department of Social and Health Services, state funding should be appropriated for the representation of indigent parents and children.

State defense funding should be administered by the Office of Public Defense, the only statewide indigent defense agency, which should efficiently oversee its disbursement. Statewide children's representative funding should be administered by the Office of Public Defense or another judicial branch agency, which should efficiently oversee its disbursement.

- 2. Statewide Statistics:** Case numbers and funding amounts should be uniformly tracked on a statewide basis for these important cases.
- 3. Continuances:** Courts and counsel should work together to reduce delays and continuances in dependency and termination cases.

4. **Indigency Screening:** Before counsel is appointed, courts should ensure that parents, guardians, and legal custodians are screened for indigency pursuant to RCW 101.01.
5. **Early Paternity Establishment:** If there is more than one possible father, the prosecuting attorney should establish paternity early in the dependency or termination case. This will benefit all parties and save time and effort on the part of counsel and the Department of Social and Health Services.

DEFENSE REPRESENTATION

6. **Adequate Funding of Cases:** Cases should be funded at a level that attracts competent counsel and allows defense attorneys to prepare before hearings.
7. **Availability of Defense Experts and Investigators when Appropriate:** Funding for defense experts, investigators, and other assistants should be made available to defense attorneys.
8. **Attorney Standards:** Qualified, diligent attorneys should be selected for dependency and termination defense work. Caseload limits should be established for public defenders and contract attorneys. Contracts should be developed for defense representation that are enforceable and state standards (proposed standards are located at Appendix 1).
9. **Statewide training support for dependency and termination attorneys:** Training and conferences should be offered that are comparable to AG training and conferences on dependency and termination representation.

CHILDREN'S REPRESENTATIVES

10. **CASA Program Support:** State support of CASA GAL programs should be continued and should be extended to fully support county programs.
11. **Attorney Standards:** Qualified, diligent attorneys should be selected for representation of children in dependency and termination cases. Caseload limits and practice standards should be developed for attorney GALs and children's attorneys, which should be enforced by contract provisions or other payment methods used for these cases.

APPENDIX 1

Proposed Standards for Dependency and Termination Defense Attorneys

Note: These standards were prepared by defense attorneys from King and Pierce Counties for inclusion in the report as proposed standards.

1.1 Role of Dependency Counsel

The paramount obligation of dependency counsel is to provide effective and quality representation to their clients at all stages of the dependency process. Attorneys have an obligation to abide by ethical norms and act in accordance with the rules of the court.

1.2 Education, Training and Experience of Dependency Counsel

To provide quality representation, counsel must be familiar with substantive dependency law, the law of civil procedure, and the local rules and their application in the particular jurisdiction. Counsel has a continuing obligation to stay abreast of changes and developments in the law.

Commentary: At a minimum, training should include information about relevant federal and state laws and agency regulations, relevant court decisions and court rules; an overview of the court process and key personnel in child-related litigation; a description of applicable guidelines and standards for representation; information on child development, needs, and abilities; information on the multi-disciplinary input required in child-related cases^{*}, including information on local experts who can provide consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in his or her home, if possible, information concerning family dynamics and dysfunction including substance abuse, and the use of relative care; information on accessible child welfare, family preservation, medical, educational, and mental health resources for child clients and their families, including placement, evaluation/diagnostic, and treatment services; and the structure of agencies providing such services as well as provisions and constraints related to agency payment for services.

Prior to handling a dependency matter, counsel should have sufficient experience or training to provide quality representation. Prior to representing a client in a termination of parental rights trial, counsel should have experience with dependency cases, such as representing at least five clients from the beginning through the dependency dispositional hearing, or should have the assistance of an experienced co-counsel.

^{*} A case is defined as an attorney's representation of one or more persons in a proceeding or set of proceedings under the same cause number(s).

1.3 General Duties of Counsel

(a) Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to ensure the availability sufficient time, resources, knowledge and experience to offer quality representation to a client in a particular matter. If it later appears that counsel is unable to offer quality representation in the case, counsel should move to withdraw and ask for the appointment of another attorney.

(b) Counsel has the obligation to keep the client informed of the progress of the case.

Commentary: Counsel should avoid accepting new cases of a quantity of more than sixty new cases per year to ensure that the attorney is able to meet these standards. Caseload limits should be proportional to the State's staffing of attorneys and support staff. If State staffing exceeds defense staffing in a given county, then defense caseload limits should be reduced proportionately. (i.e. If State staffing is 10 attorney FTEs but defense only has 5 attorneys, then the caseload should be reduced by 50%.) If the State has 10 attorney FTEs for a given jurisdiction but only 5 defense FTEs have been funded for the same jurisdiction, defense caseloads should be reduced by 50% to better equalize legal representation resources between the State and the parents or legal custodians.

In order to ensure quality of representation, the attorney has the obligation to obtain copies of all pleadings and relevant notices; participate in depositions, negotiations, discovery, pretrial conferences, and hearings; enter a notice of appearance and request for discovery, informing other parties and their representatives that reasonable notification is requested prior to case conferences, changes of placement, and other changes of circumstances affecting the client and the client's family; counsel the client concerning the subject matter of the litigation, the client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process; develop a theory and strategy of the case to implement at hearings, including factual and legal issues; identify appropriate family and professional resources for the client; and, where appropriate, obtain the services of a social worker or other expert. Access to social workers, who are either employees or within the attorney's office or an independently contracted social worker is of paramount importance in adequately preparing defense.

1.4 Conflict Situation

Counsel must be alert to all potential and actual conflicts of interest between parents or others that would impair counsel's ability to represent a client. Where appropriate, counsel may be obliged to seek an advisory opinion on potential conflicts.

1.5 Maintain Contact With the Client

Establishing and maintaining a relationship with the client is the foundation of representation. The attorney should speak with the client outside of court. The client should be apprised of upcoming hearings, information gathered, and significant events affecting the family.

1.6 Adequate Compensation for Quality Representation

a. Public defense attorneys and staff should be compensated at a rate commensurate with their training and experience.

b. Reasonable compensation should be provided for private attorneys appointed as counsel.

c. The legal representation plan should provide for adequate numbers of secretaries, paralegals, and other support services such as investigators and/or social worker to ensure the effective performance of counsel during trial preparation, in the preparation of dispositional plans, and other hearings.

Commentary: To attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys and staff in prosecutorial offices or attorney general offices in the area. Compensation for assigned counsel should reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the case. Assigned counsel should be compensated for out-of-pocket expenses.

2.0 Investigation and Discovery

2.1 Investigation

a. Counsel has a duty to conduct a thorough, continuing, and independent investigation at every stage of the proceeding.

b. Where appropriate, counsel should make a prompt request to examine any physical evidence or expert reports relevant to the case.

Commentary: Methods of developing investigative information may include obtaining and reviewing all records relevant to the case, including social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, and school records; conducting an in-depth interview of the client to obtain background information and family history, exploring potential witnesses, exploring relative placements, and seeking information regarding the specific allegations; conducting interviews of potential witnesses. Counsel should attempt to interview witnesses in the presence of a third person, who will be available, if necessary, to testify as to the interview at trial, or, alternatively, have an investigator conduct such interviews. Defense offices should employ one trained investigator for every four attorneys for this purpose, if possible.

Where appropriate, counsel should attempt to view the scene of alleged incident(s), under circumstances as similar as possible to those existing at the time of the alleged incident. Where appropriate, counsel should visit child's placement in order to evaluate it as the alternative to the family home.

Counsel should secure the assistance of experts where necessary or appropriate for:

- a. the preparation of the case;
- b. adequate understanding of the case; and/or
- c. to rebut the petitioner's case.

Reasonable compensation for expert witnesses necessary to preparation and presentation of the defense case should be provided. Expert witness fees should be maintained and allocated separately from defender services funds. Defense counsel should be free to retain independent experts and in no case be forced to select experts from a list pre-approved by either the court or the petitioner.

2.2 Formal and Informal Discovery

Counsel has a duty to pursue as soon as practicable discovery procedures provided by the rules of the jurisdiction and such informal discovery methods as may be available to supplement the factual investigation of the case. In formalizing discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations.

Commentary: Counsel should consider seeking discovery of potential exculpatory information; names and addresses of all the petitioner's witnesses, and their prior statements; results or reports of relevant physical or mental examinations; Department of Licensing foster home records; and all Child Protective Services' records including, but not limited to, medical, financial expenditures, service episode reports, and foster care selection. Counsel should consider seeking discovery by interrogatories; depositions; specific requests for discovery; and freedom of Information Act requests.

3.0 Negotiations

3.1 Negotiations on behalf the Petitioner

a. Counsel should explore with the client the possibility and desirability of reaching a negotiated settlement rather than proceeding to trial and in so doing should fully explain the rights that would be waived by a decision to enter a settlement.

b. The decision to enter the agreement rests solely with the client and counsel should not attempt to influence unduly that decision.

Commentary: Counsel should ordinarily obtain the consent of the client before entering into negotiations. Counsel should keep the client fully informed of continued negotiations and convey to the client any offers made for a negotiated settlement. Counsel should not accept any agreement without the client's express authorization. The existence of ongoing tentative negotiations should not prevent counsel from continuing to prepare the case for court.

In order to develop an overall negotiation plan, counsel should be fully aware of, and ensure that the client is fully aware of the consequences of, the settlement; the possibility of and consequences of criminal charges; appropriate time deadlines; and the possibility having to register as a child abuser.

In developing a negotiation strategy, counsel should be completely familiar with concessions that the client might offer and benefits the client might obtain from a negotiated settlement, including, but not limited to a better facts statement and more contact with the child(ren). In conducting negotiations, counsel should be familiar with: services available in the community; the developmental level of the child(ren) involved; family resources available; the burden of proof and evidence in the possession of the petitioner.

When appropriate, counsel should ensure that time deadlines are provided in agreed orders. This includes, but is not limited to, providing for the petitioner's duty to provide services within specific time deadlines for the delivery of such services, or specifying that the completion of a service or services by a client will result in more visitation or return of the child(ren).

Where appropriate, counsel should use unambiguous language; e.g., "The child shall be returned when the mother successfully completes thirty days of inpatient drug/alcohol treatment and three weeks of after-care."

3.2 The Decision to Enter a Negotiated Settlement

Counsel should inform the client of any tentative negotiated agreement, and explain the full content of the agreement. Counsel should explain the advantages and disadvantages and the potential consequences of the agreement.

4.0 Trial Preparation

Counsel shall diligently prepare for trial. Counsel must be prepared to make and respond to all motions, provide an opening statement, conduct cross-examination and direct examination, and give a closing statement.

Commentary: Where appropriate, counsel should have prepared the following materials for the time of trial: copies of all relevant documents filed in the case; relevant documents prepared by investigators; an outline or draft opening statement; cross-examination plans for all possible State witnesses; direct examination plans for all the client's prospective witnesses; copies of subpoenas issued on behalf of the client; prior statements of all the petitioner's witnesses (caseworker narrative, police reports, transcripts); prior statements of all the client's witnesses; reports from experts; a list of all exhibits, and the witnesses through whom they will be introduced; originals and copies of all relevant statutes and cases; originals and copies of all documentary exhibits; an outline or draft of closing argument; a notebook of exhibits which will be introduced for the judge and opposing counsel; and relevant statutes and DSHS procedure manuals for possible use in cross-examination of DSHS caseworkers.

Counsel should advise the client of the need to invoke the fifth amendment pertaining to any potential criminal activity, and that because the dependency action is a civil proceeding, invoking the fifth amendment will be interpreted as an answer against his or her interest.

5.0 Specific Proceedings Standards

5.1 Obligations at the 72-hour Shelter Care Hearings

Counsel has a paramount obligation to effectively represent a client at the 72-hour hearing by reviewing all of the allegations and the evidence with the client before going into court, introducing evidence, examining witnesses, and presenting argument on behalf of the client.

Commentary: Counsel should explain the role of an attorney, the dependency process, the purpose of the 72-hour hearing, and the role of the other participants in the proceeding. Each of the allegations in the dependency petition should be read to the client with time allowed for the client to give his or her answer to the allegations. The attorney should obtain information on the client's background. The entire DSHS or supervising agency records including their recommendations for the hearing should be obtained and reviewed with the client prior to the hearing. Counsel has an obligation to interview the caseworker, and to attempt to contact any potential witness that the client believes would be helpful. Counsel should explore with the client the possibility of a relative placement. With the client's permission, counsel may attempt to negotiate a settlement in the case. The attorney shall effectively represent the client's position to other parties as well as in court.

5.2 Dependency Fact-Finding

In addition to the requirements in 4.0 above, counsel must thoroughly explain to the client the effects of a finding of abuse or neglect. The client must be informed that such a finding will require being finger printed and being registered as a child abuser with the State Patrol. The future effect on employment opportunities should be discussed.

5.3 Review Hearings and Permanency Planning Hearings

a. Consistent with the client's wishes, the attorney should seek appropriate services through court orders to ensure the implementation of the service plan.

b. Counsel should consider requesting joint permanency plans of return home and guardianship when the petitioner's single permanent plan is non-relative adoption.

c. Counsel should be prepared to set additional hearings when necessary. Counsel should be prepared to offer exhibits, provide independent evidence, provide witness testimony, and cross-examine witnesses.

Commentary: Appropriate services may include, but not be limited to, family preservation-related prevention or reunification services; family and sibling visitation; child support; domestic violence prevention, intervention, and treatment; medical care; mental health counseling; drug and alcohol treatment; urinalysis; parenting education; education; housing; family counseling; home-based services; homebuilders services; parenting instructions at visitation; and interstate compacts to explore relative placements.

When appropriate, counsel may consider requesting an order for the petitioner to show cause why the petitioner has failed to provide court ordered services and request an adequate remedy which may include monetary sanctions for every day the petitioner fails to comply with the order.

Counsel should file briefs in support of all motions. If applicable, counsel should consult with and consider calling as a witness the attorney's social worker to provide testimony on services, observations of the parent/child relationship, the most recent literature on visitation, child development, etc.

5.4 Termination Fact-Findings

Counsel should consider the possibility of assisting the client and prospective guardians to file a petition for guardianship as an alternative to termination. Counsel should follow the requirements for trial preparation in Standard 4.0.

Commentary: There are a number of situations in which a guardianship should always be explored as an alternative to termination such as where the child is older and knows his/her parents; the child is placed with a family member or friend; DSHS has refused to place with a relative who is not willing to adopt the child, but is willing to be a guardian; or the child has mental or physical health issues for which the caretaker will need additional assistance from DSHS.

APPENDIX 2

JUVENILE COURT QUESTIONNAIRE

Name _____ Court _____

Please answer the following questions using your court's statistics, if possible. If not, give your best estimate and note the fact that your answer is an estimate (e.g., "500 cases-estimate")

Please check off how your court counts cases for statistical purposes: _____ each child counts as a case, _____ each dependency and termination counts as a case, _____ individual dependencies which lead to terminations count as a case, or _____ other, please describe:

1. List the total dependency and termination cases filed in:

1995: dependency _____ termination _____
1996: dependency _____ termination _____
1997: dependency _____ termination _____
1998: dependency _____ termination _____
1999 to date: dependency _____ termination _____

2. List the total dependency and termination cases resolved by final order in:

1995: dependency _____ termination _____
1996: dependency _____ termination _____
1997: dependency _____ termination _____
1998: dependency _____ termination _____
1999 to date: dependency _____ termination _____

3. Please list the dependency/termination total defense attorney budgets for:

1995 _____ 1996 _____ 1997 _____
1998 _____ 1999 _____

4. Please list the dependency/termination total guardian ad litem budget for:

1995 _____ 1996 _____ 1997 _____
1998 _____ 1999 _____

5. Please list the total childrens' attorney budget for:

1995 _____ 1996 _____ 1997 _____
1998 _____ 1999 _____

6. Are there local rules governing dependency and termination cases? If so, please attach.
_____ Yes _____ No

Defense Attorney Questions

7. What percentage of the adults receiving court-appointed attorneys fit into the following categories?
a. ___ married parents
b. ___ mothers not married to the child's father
c. ___ fathers not married to the child's mother-paternity not at issue
d. ___ putative fathers-paternity at issue
e. ___ guardian
f. ___ grandparent
g. ___ legal custodian
8. Please estimate what percentage of parents/guardians/legal custodians hire private counsel for dependencies _____ for terminations _____.
9. Are indigent dependency/termination parents/guardians/legal custodians screened for indigency before an attorney is appointed? If so, by whom? _____
What percentage are found not to be indigent? _____
10. In what percentage of cases are multiple defense attorneys appointed for married parents who are living together? _____ What is the policy regarding appointment in these cases? If it is in writing, please attach.
11. In what percentage of cases where paternity has not been established do two or more possible fathers for a child appear? _____ Who is appointed an attorney in such a case? _____
12. From what source are indigent parents, legal custodians, and guardians appointed attorneys?
a. ___ appointed from lists
b. ___ public defenders
c. ___ by a law firm under contract. If so, please attach a copy of the contract.
d. ___ other, please describe: _____
13. Are there experience, training, and quality control requirements that must be met in order to represent indigent parents, legal custodians, and guardians?
a. _____ No
b. _____ Yes, please describe: _____

14. What is the experience level of attorneys who represent parents, legal custodians, and guardians in dependencies/terminations?
15. If parents, legal custodians, and guardians are represented by a law firm or attorney(s) under contract, please describe the law firm/attorney(s) contract process. (e.g., is there an RFP process?)
16. What is the county's rate of pay for dependency defense?
- _____ per month paid to attorneys, regardless of the number of cases
 - _____ per case for dependency defense
 - _____ per hour for dependency defense

Is there a cap on payment?____Are there ever exceptions to the cap? If so, how often are requests made?____granted?_____

17. What is the salary range of attorneys who represent parents, legal custodians, and guardians in dependencies/terminations?
From _____ to _____

18. What is the county's rate of pay for termination defense?
- _____ per month paid to attorneys, regardless of the number of cases
 - _____ per case for termination defense
 - _____ per hour for termination defense.

Is there a cap on payment?____Are there ever exceptions to the cap? If so, how often are requests made?____granted?_____

19. Approximately what percentage of custodial parents are represented by attorneys in dependencies?
- _____ % at shelter care hearings
 - _____ % at fact-finding hearings
 - _____ % at review hearings
 - _____ % at disposition hearings
 - _____ % in termination hearings

20. Please estimate what number of assistant attorneys general FTEs handle/handled dependency and termination cases in your county in:

1995 _____	1996 _____	1997 _____
1998 _____	1999 _____	

21. Please estimate what number of defense attorney FTEs represent(ed) parents, guardians, and legal custodians in:

1995 _____ 1996 _____ 1997 _____
1998 _____ 1999 _____

22. What is the number of cases in each defense attorney's caseload at present?
Dependencies _____ Terminations _____

23. Do the defense attorneys handle other types of cases as well as dependencies and terminations? _____ If so, how many and what kind? _____

24. Does the average parent, guardian, or legal custodian have the same defense attorney throughout the representation? _____ If not, what is the range of defense attorney turnover rate during individual cases?

25. Do parents appear for hearings? Usually _____ Rarely _____ Sometimes _____

26. Please rank the importance of defense attorneys' functions in dependency and termination cases (1 being the most important; you may rank more than one as 1, 2, or 3.):
_____ adversarial representation
_____ voicing parents' concerns to the judge
_____ explaining the proceedings and system
_____ developing services
_____ facilitating settlements
_____ other, please describe:

27. In your estimation, what percent of hearings are continued?
_____ % of shelter care hearings
_____ % of fact-finding hearings
_____ % of review hearings
_____ % of disposition hearings
_____ termination hearings

28. How much are attorneys paid if a hearing is continued? _____

29. Are case conferences scheduled for dependencies?
_____ Requirement _____ Usually _____ Rarely

30. In your estimation, what percent of dependencies result in agreed orders? _____ What percent are litigated? _____ What percent of disposition orders are agreed? _____ What percent are litigated? _____

Guardian Ad Litem Questions

31. What types of guardians ad litem are appointed by the court in dependency/termination cases?

CASA: _____ % of the cases
 Attorney representing volunteer GAL: _____ % of the cases
 Attorney representing child: _____ % of the cases
 Staff guardian ad litem: _____ % of the cases
 None: _____ % of the cases
 Other: _____ % of cases, please describe:

What percentage of the GAL budget is spent on: CASA volunteers _____, attorneys _____, staff GALS _____.

32. What was/is the court's total guardian ad litem budget for:

1995 _____	1996 _____	1997 _____
1998 _____	1999 _____	

33. What is the source of funds for the court's guardian ad litem budget? Please list sources, amounts, and the person who administers the funds.

34. What percentage of children who are involved in dependencies/terminations are appointed guardians ad litem?

_____ % of children
 _____ % of children under 12
 _____ % of children in complex cases
 _____ other, please describe:

Please describe the court's policy or attach the court's written rules regarding GAL appointment.

35. When there is more than one dependent child in a family, are separate GALs appointed? Please describe the court's policy or attach the court's written rules regarding GAL conflicts.
36. If your court has staff guardians ad litem, what is their caseload history?
- | | |
|--------------------------------|--------------------------------|
| _____ caseload per GAL in 1995 | _____ caseload per GAL in 1996 |
| _____ caseload per GAL in 1997 | _____ caseload per GAL in 1998 |
| _____ current caseload per GAL | |
37. If your court has staff guardians ad litem, do they have other job duties? _____ If so, please describe their other job duties and the percentage of their time spent on guardian ad litem duties.
38. If your court has volunteer GALs, what are their caseload limits? _____
39. Are guardians ad litem appointments ever unfilled due to an insufficient number of available GALs? _____ No _____ Yes, please describe:

Childrens' Attorney Questions

40. If your court appoints paid children's attorneys for dependencies and terminations, please estimate the following:
- an attorney is appointed to directly represent children under 12 in _____% of cases
 - an attorney is appointed to directly represent children over 12 in _____% of cases

What is the criteria for appointment? Please describe, or attach if it is written.

41. How are children's attorneys selected for appointment?
- contract with the county: _____%
 - appointment from list: _____%
 - availability in court: _____%
 - other: _____%

42. If the county has a contract for children's attorney representation in dependency/termination cases:
 What is the caseload limit? _____ What is the total payment? _____
 Please describe the contract selection process (e.g., RFPs). What are the training and experience requirements?
43. If there is no contract, what is the rate of pay for dependencies?
 _____ per case
 _____ per hour
 If there is a cap, are exceptions allowed and if so, do attorneys request them?
44. What is the rate of pay for terminations?
 _____ per case
 _____ per hour
 If there is a cap, are exceptions allowed and if so, do attorneys request them?
45. What is the dependency/termination caseload range per children's attorney? From _____ to _____.
46. Can dependency/termination non-contract childrens' attorneys represent more than one child within a family at a time? What is the criteria? Please attach if it is written.
47. On the back of this page or a separate sheet, please describe how federal laws, the 1998 amendments to RCW 13.34, and any other factors have affected the court's dependency and termination caseload during the past few years, and add any comments or suggestions you have regarding costs in these cases.

Thank you for your participation. Please return by September 24, 1999, to:

**Washington State Office of Public Defense
 925 Plum Street
 Building 4, 3rd Floor
 PO Box 40957
 Olympia, WA 98504-0957**

DEFENSE ATTORNEY QUESTIONNAIRE

Name _____ Law Office _____

(Note: Please answer all questions below to the extent possible. The terms 'attorneys' and 'law firm' apply to sole contractors or practitioners as well as multiple-attorney firms.)

1. What percent of the adults receiving court-appointed attorneys in dependency and termination cases fit into the following categories?

- a. ___ married parents
- b. ___ mothers not married to the child's father
- c. ___ fathers not married to the child's mother – paternity not at issue
- d. ___ putative fathers – paternity at issue
- e. ___ guardian
- f. ___ grandparent
- g. ___ legal custodian

2. Are parents/guardians/legal custodians in dependencies and terminations screened for indigency before an attorney is appointed? _____ If so, by whom?

What percent of parents/guardians/legal custodians are denied attorneys on the basis that they are not indigent? _____

3. From what source does the court appoint attorneys to represent adults in dependency and parental termination proceedings?

- a. ___ appointed from lists
- b. ___ public defenders
- c. ___ by a law firm under contract. If so, please attach a copy of the contract.
- d. ___ other, please describe: _____

First public defender's under contract, then if conflicts, to attorney's on lists.

4. Are there experience, training, and quality control requirements for defense attorneys that must be met in order to represent indigent adults in dependency and parental termination proceedings?

- a. ___ No
- b. ___ Yes, please describe (or attach written attorney standards/requirements):

5. What is the salary range of attorneys in your office who represent adults in dependencies and parental termination proceedings?
From _____ to _____.

6. What is the experience level of attorneys in your office who represent adults in dependencies and parental termination proceedings?
From _____ to _____ years general experience; from _____ to _____ dependency/termination experience.

7. What is the county's rate of pay for the defense of dependency cases?
a. _____ per month for all dependencies, regardless of the number
b. _____ per parent, guardian, or legal custodian for dependencies
c. _____ per hour for dependency defense
d. _____ other

Is there a cap on payments? _____ If so, what is it? _____

Are there exceptions to the cap? _____

If so, how often are requests made and granted to go over the cap? _____

8. What is the county's rate of pay for defense of parental termination cases?
a. _____ per month for all terminations, regardless of the number
b. _____ per parent, guardian, or legal custodian for terminations
c. _____ per hour for termination defense

Is there a cap on payments? _____ If so, what is it? _____

Are there exceptions to the cap? _____

If so, how often are requests made and granted to go over the cap? _____

9. What sources of funding, other than county funds, are used to pay defense costs in dependency and parental termination cases, if any?

10. What is the total number of dependency and parental termination cases handled by your law firm this year to date? _____
 What was the total number for:
 1995 _____ 1996 _____ 1997 _____ 1998 _____

11. What number of attorneys handle/handled dependency and termination cases in your firm in:
 1995 _____ Full time _____ Part-time (approx. ___ hours per week)
 1996 _____ Full time _____ Part-time (approx. ___ hours per week)
 1997 _____ Full time _____ Part-time (approx. ___ hours per week)
 1998 _____ Full time _____ Part-time (approx. ___ hours per week)
 1999 _____ Full time _____ Part-time (approx. ___ hours per week)

What number of assistant attorneys general handle/handled dependency and termination cases in your county in:
 1995 _____ 1996 _____ 1997 _____ 1998 _____

12. How often do parents'/guardians'/legal custodians' attorneys in your firm interview clients in person before shelter-care hearings?
 1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually

How often do parents'/guardians'/legal custodians' attorneys in your firm interview clients by telephone before shelter-care hearings?
 1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually

13. How often do parents'/guardians'/legal custodians' attorneys carry out the following advance preparation for *uncontested* disposition and periodic review hearings?

a. Talk to their clients before the day of the hearing.
 1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually

b. Talk to their clients in person before the day of the hearing.
 1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually

c. Investigate alternative services that might be provided to the child or family.
 1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually

d. Review expert reports.
 1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually

e. Obtain expert reports
 1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually

14. How often do parents'/guardians'/legal custodians' attorneys carry out the following preparation for *contested* dependency and termination hearings?
- a. Talk to their clients before the day of the hearing.
1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually
- b. Talk to their clients in person before the day of the hearing.
_____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually
- c. Investigate alternative services that might be provided to the child or family.
1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually
- d. Review expert reports.
1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually
- e. Obtain expert reports
1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually
15. How often do parents'/guardians'/legal custodians' attorneys handling dependency and termination cases in your firm file written motions or briefs (without being ordered to by the court)?
1 _____ Rarely 2 _____ Occasionally 3 _____ Often 4 _____ Usually
16. For the attorneys in your firm who handle dependencies, what is the current caseload of dependency cases per attorney? _____
- For the attorneys in your firm who handle terminations, what is the current caseload of termination cases per attorney? _____
17. Do the attorneys in your firm who handle dependency and termination cases also handle other types of cases? _____
If so, how many other cases and what kinds of cases? _____
- What is the percentage range of dependency/termination cases vs. other cases handled by attorneys in your firm?
_____ % dependency/termination cases
_____ % other cases
18. Do most parents/guardians/legal custodians have the same defense attorney throughout the dependency case? _____
If not, what is the average defense attorney turnover rate during an individual case?

Do most parents/guardians/legal custodians have the same defense attorney throughout the parental termination case? _____

If not, what is the average defense attorney turnover rate during an individual case? _____

Do most parents/guardians/legal custodians have the same defense attorney represent them in the termination case that they had in the dependency case (if any)? _____

If not, does the defense attorney in the dependency case automatically withdraw when and if a termination petition is filed? _____

Please describe the reasons for your procedure:

19. Do parents appear for hearings?

1 _____ Usually 2 _____ Sometimes 3 _____ Rarely

20. Please rank the importance of defense attorney functions in your firm's dependency cases (1 being the most important; you may rank more than one as 1, 2, or 3).

_____ adversarial representation
_____ voicing parents' concerns to the judge
_____ explaining the proceedings and system
_____ developing services
_____ facilitating settlements
_____ other:

Please rank the importance of defense attorney functions in your firm's termination cases (1 being the most important; you may rank more than one as 1, 2, or 3).

_____ adversarial representation
_____ voicing parents' concerns to the judge
_____ explaining the proceedings and system
_____ developing services
_____ facilitating settlements
_____ other:

21. (a) In your estimation, what percent of the following hearings are continued at defense counsel's request:

_____ % shelter-care hearings
_____ % fact-finding hearings
_____ % 30-day hearings
_____ % review hearings
_____ % disposition hearings
_____ % parental termination hearings

(b) What are common reasons for continuances?

- _____ % states' failure to provide documents or order
- _____ % scheduling problems - unavailability of defense attorney
- _____ % parents not present
- _____ % other (please give examples)

(c) What are common reasons for state-requested continuances?

- _____ % experts unavailable
- _____ % caseworker unavailable
- _____ % other (please give examples)

(d) In your estimation, what percent of the following hearings are continued at the state's request:

- _____ % shelter-care hearings
- _____ % fact-finding hearings
- _____ % 30-day hearings
- _____ % review hearings
- _____ % disposition hearings
- _____ % parental termination hearings

(e) What are common reasons for continuances?

- _____ % states' failure to provide documents or order
- _____ % scheduling problems - unavailability of defense attorney
- _____ % parents not present
- _____ % other (please give examples)

(f) In your estimation, what percent of the following hearings are continued at the GAL's request:

- _____ % shelter-care hearings
- _____ % fact-finding hearings
- _____ % 30-day hearings
- _____ % review hearings
- _____ % disposition hearings
- _____ % parental termination hearings

(g) What are common reasons for GAL requested continuances?

- _____ % need more time to investigate
- _____ % other (please give examples)

(h) What are common reasons for jointly-requested continuances?

_____ % agreement on matters at issue
_____ % other (please give examples)

(i) If a hearing is continued at the request of defense counsel during the hearing, does defense counsel get paid for that hearing? _____

22. Does the court have a case conference requirement for dependency and/or termination cases?

_____ No _____ Yes, please describe:

23. In your estimation, what percent of the following hearings result in agreed orders?

Dispositional orders _____ % agreed orders _____ % litigated

Findings of fact _____ % agreed orders _____ % litigated

24. Please describe any defense attorney considerations regarding appeals that you think are unique to dependency and termination cases.

25. Do defense attorneys ever meet with the judge/commissioner and/or other court officials to discuss on-going dependency/termination matters, such as procedural issues?

_____ Yes _____ No

26. On the back of this page or a separate sheet, please describe defense issues you think are important in dependency and parental termination cases, including comments you may have regarding funding defense representation.

Thank you for your participation. Please return by September 24, 1999, to:

**Washington State Office of Public Defense
925 Plum Street
Building 4, 3rd Floor
PO Box 40957
Olympia, WA 98504-0957**