

**STATUS REPORT
ON
PUBLIC DEFENSE
IN
WASHINGTON STATE**

January 23, 2007

Washington State Office of Public Defense

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EXECUTIVE SUMMARY

Washington has a federal and state constitutional obligation to provide adequate public defense representation to poor persons who are charged with crimes:

The legislature finds that effective legal representation must be provided for indigent persons...consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the constitutional right to counsel attaches. RCW 10.101.005.

The legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants...Laws of Washington 2005, Ch. 457, Sec. 1.

Washington's public defense problems are pervasive and deep. The Legislature has taken important measures recently to address the issues, positively impacting them, but we have a long way to go. In order to meet the state's constitutional obligation, we must continue to press forward.

Over the last decades, Washington's public defense responsibility has been carried out by the counties and cities. During the past three years, the media and many groups have documented widespread failures in the administration of public defense. Settlement of a lawsuit against Grant County resulting in a new public defense system for the county has highlighted the problems.

In 2005, the Legislature authorized a new state public defense program at Washington State Office of Public Defense (OPD), funded by SB 5454. This program provides resources for counties and public defense attorneys, including consultation and regional attorney training. The Legislature also passed HB 1542 to establish a county-state partnership for the improvement of public defense, and in 2006, appropriated \$3 million for this partnership.

The new programs have had immediate positive effects. In applications filed in the fall of 2006, counties reported numerous individualized improvements they intend to make this year with their new funds, including increasing attorney compensation, providing investigative services and, in three counties, setting up new oversight and delivery systems.

However, the counties' applications also report serious inconsistencies in the provision of public defense in the state. Only the eleven counties that have longstanding public defender agencies even come close to satisfying the standards adopted in RCW 10.101.030 for public defense systems.

Until now, public defense deficiencies have remained mostly unseen because oversight is inadequate in many counties. In 2004, survey results published in the WSBA Blue Ribbon Panel Report indicated that only 6.5% of surveyed judges and other officials believed that public defense attorneys were regularly evaluated or monitored.

Funds sufficient to pay attorneys a decent wage for carrying full caseloads are critically lacking in many counties. For the contract public defense attorneys who provide representation in the majority of the state, most counties pay a flat-fee of \$30,000 to \$70,000 – which leaves a scant net income after paying normal overhead costs such as office rent, support staff, social security, benefits, and so forth. In order to maintain a middle-class income, most contract public defense attorneys-- even those with fulltime equivalent public defense caseloads—must pile on additional public defense caseloads, and/or maintain a private practice.

Overloaded caseloads often results in rushed and inadequate representation. In much of the state, attorneys commonly do not have time to talk with clients except for brief whispered conversations in courthouse hallways or at the back of crowded courtrooms while awaiting their case to be called.

Without additional state funding, coupled with effective monitoring of the use of the funding, the crisis in public defense will continue in many counties in Washington State. To make progress toward reaching constitutionally required adequate defense in all counties, the next steps are clear:

- The state must invest significant, targeted funding in our public defense systems.
- Active state oversight is critical to meeting the state's obligation to provide adequate public defense.
- Involvement by all justice community groups is vital and must continue.
- OPD must work with the counties to standardize the collection of data tracking regarding public defense services.
- A system of sharing resources among jurisdictions should be considered.
- Training and other resources must be maintained.

This biennium, we must leap forward toward meeting the Legislature's declaration that adequate representation shall be furnished in all cases involving poor criminal defendants, in each of our 39 counties.

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INTRODUCTION

This is a dynamic time for public defense in Washington State. Attention of the media, the settlement of a Grant County lawsuit, a report completed by the Washington State Bar Association's (WSBA) Blue Ribbon Panel on Criminal Defense, the work of a continuing WSBA Committee on Public Defense, the interest of the counties and the cities, the longtime efforts of the Washington Defender Association, and the sustained efforts of the courts' Justice in Jeopardy initiative all have combined to move the issue of widespread inadequacies in public defense in Washington State to the forefront.

The efforts of these groups and others resulted in new legislation in 2005, HB 1542, and new state funding for counties in 2006 to improve trial level public defense for indigent persons accused of crimes. Another important legislative act in 2005 was the passage of the Justice in Jeopardy Initiative's proposal, SB 5454. This legislation recognizes "the state's obligation to provide adequate representation to criminal indigent defendants" and appropriates state funding for trial level public defense consulting and training programs at the Washington State Office of Public Defense.

It is important to note that over the last two years, the Legislature has also embarked on a program to implement effective public defense services for indigent parents in dependency and termination proceedings. The Parents Representation Program, administered by the Washington State Office of Public Defense (OPD) now is funded in eighteen juvenile courts and is in the process of being expanded throughout the state.

In the area of trial level public defense, the passage of HB 1542 addresses the requirements of our federal and state constitutions. These establish that the state must implement an adequate system of public defense representation for all indigent persons charged with crimes. Until the 2005 and 2006 legislative changes, the state left its constitutional duty solely to the counties.

Over the years, each county has developed its own individualized system. At this point, for the first time, information about Washington counties' systems has been made available through Washington State OPD's implementation of the new legislation. Through the new county-state partnership for implementing adequate trial level public defense, and the state's initial \$3 million investment, we have a clearer picture of the deficiencies statewide, and what must be done to rectify these problems.

This report first discusses how the state is meeting Washington's public defense standards and second provides a snapshot of each county's public defense system.

Washington's public defense deficiencies are chronic and deep. However, with the continuation of targeted state investments and the establishment of effective state oversight, our patchwork system can be remedied. We can and must implement the declaration that:

The legislature finds that effective legal representation must be provided for indigent persons...consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the constitutional right to counsel attaches. RCW 10.101.005

PUBLIC DEFENSE STANDARDS: STATUS IN WASHINGTON COUNTIES

Methodology

Information for this report was collected from the counties' applications for state funding under HB 1542, as well as Washington State OPD's public defense consultation program for county officials, Washington State OPD's training programs for hundreds of public defense attorneys throughout the state, and from Washington State OPD's active participation in the WSBA Committee on Public Defense and ongoing work with the Washington Defender Association, the Justice in Jeopardy partnership, and many other concerned groups and individuals.

Until now, county data regarding public defense caseloads, compensation, and total amounts paid for public defense has not been systematically collected. HB 1542 requires Washington State OPD to create an application process for the distribution of state funds for improvements in public defense by the counties. The counties must use distributed HB 1542 funds to make significant, demonstrable improvements toward meeting public defense standards, or already meet the WSBA endorsed standards for public defense services.

These eighteen standards were developed by the Washington Defender Association (WDA) and endorsed by the WSBA in 1990. The WSBA standards were incorporated by the Legislature in RCW 10.101.030, which requires counties and cities to utilize them as guidelines when adopting mandatory standards for local public defense systems. The WSBA's Committee on Public Defense is currently undergoing a review of the standards in conjunction with WDA, which has prepared a WDA update. Changes being considered are designed to incorporate modifications in Washington laws and public defense practices over the past seventeen years. While the WSBA Board of Governors will consider endorsement of any proposed changes, the current version of the basic standards reported here have stood the test of time and are not expected to be altered substantially.

Pursuant to HB 1542, Washington State OPD initiated the county application process in the summer of 2006. Thirty-eight of the thirty-nine counties applied for HB 1542 funds. They provided information about the structure of public defense in their counties, attorney caseload levels, total amounts spent for felony, misdemeanor, and juvenile court representation, the number of cases assigned to public defenders, copies of their public defense ordinances, and copies of 2005 contracts.

This data, in addition to Washington State OPD's ongoing consultations with county officials as well as the agency's 2006 regional conferences, attended by more than 300 defense attorneys statewide, provides important new information about public defense.

Across the state, the information and public defense contracts provided by the counties demonstrate wide disparities in the provision of public defense. Except for the smallest counties, all have primary public defense systems and make provision for the appointment of other attorneys for conflict cases. Seven counties have public defender offices or are beginning them as a part of county government; five counties now have or are in the process of starting non-profit public defense offices; three counties appoint attorneys from a list; and twenty-four counties contract with independent private attorneys or firms to provide public defense or have a system combining both contracts and list appointments:

- **Public defender agencies** are county-funded agencies or non-profit groups contracting with a jurisdiction to provide representation.
- **Contract public defense systems** are systems in which the county enters into contracts with one or more private attorneys to provide representation.
- **List appointment systems** involve lists of attorneys who have agreed to accept public defense cases, who are appointed by the court on a case by case basis.
- **Conflict appointments** of alternate attorneys are made by judges when the initially appointed public defense attorney is prohibited by ethics rules from representing an individual defendant, usually due to prior representation of another party in the case.

As a result of the individualized nature of Washington's 39 different public defense systems, making comparisons is challenging. However, the HB 1542 application data and the counties' 2005 contracts have yielded important information about actual public defense practice in Washington. Following is a discussion of current information regarding the counties' implementation of the eighteen Public Defense Standards in Washington.

It should be noted that one positive result of the HB 1542 process is heightened compliance with the requirement that each county adopt public defense standards by ordinance. Less than one-third of the counties reported public defense ordinances in their 1542 applications, but all applying counties said that they would pass such an ordinance in the next year, as required by RCW 10.101.060(1)(a)(i). In recent months, Washington State OPD has worked with many counties regarding such ordinances, which by statute must address each of the issues covered by the eighteen public defense standards and which should use the WSBA-endorsed standards as guidelines. RCW 10.101.030. The counties' new ordinances will provide a basis for every county to address quality issues as while contracting for public defense services.

Standard One: Compensation

Public defense attorneys and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys and staff in prosecutorial offices in the area.

For assigned counsel, reasonable compensation should be provided. Compensation 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.

Contracts should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, including, but not limited to, death penalty cases. Services which require extraordinary fees should be defined in the contract.

Compensation continues to be the most significant issue in the development of an effective public defense system. While the counties with public defender agencies or non-profit offices providing public defense and some other counties provide more adequate levels of pay for their attorneys, the county-by-county funded system in Washington has been a barrier to uniformity in public defense compensation levels. Although HB 1542 emphasizes that counties must address the WSBA endorsed public defense standards, including compensation, in providing defense services, some counties still negotiate with attorneys and firms to obtain indigent defense services at the lowest cost without regard to the quality of representation.

In general, the most striking deficiencies in compensation for public defenders are found in a number of the counties that contract with private law firms and individual lawyers or appoint from a list of attorneys.

- Widely varying compensation occurs in District Court where attorneys agree to accept all cases assigned to them by the court. The lowest reported compensation rate is \$19,600 for the equivalent of a full-time misdemeanor caseload of 300 cases. The next lowest amounts for fulltime caseloads are \$22,000 and \$24,000.
- In counties paying a flat fee for misdemeanor representation, payments per case range from lows of \$65 or \$80 *per case* to more average rates of about \$175 to \$300 per case to a higher range of up to \$500 per case.
- The average reported county expenditure for full-time caseloads of 300 misdemeanor cases is \$59,250 per attorney, to cover all expenses.
- The highest contract attorney rate reported for fulltime misdemeanor caseloads ranged from \$99,000 per year to \$145,000 per year.

All these figures represent total gross payment received by the defense contractor, not salaries. This compensation is not supplemented by standard benefits enjoyed by county prosecutors and other government workers. Under the contract system, attorneys must provide their own health coverage and retirement. In addition they must pay all overhead and indirect costs of maintaining a law practice including

office and equipment rental, paralegals and office staff, office supplies, phone and fax lines, malpractice insurance, legal research, travel, training, bar dues, federal and state taxes.

Low compensation rates severely impact many counties' ability to retain experienced defenders. As one county noted in its HB 1542 state funding application, "We feel that approximate parity is necessary in order to improve the recruitment and retention of quality defenders. In the past the prosecution has often been able to hire away good defenders because of much better compensation packages."

In order to increase their income, most contract attorneys take additional public defense contracts or maintain a private practice. Counties have been made aware of the potential conflicts and abuses of this practice through press exposure of some extreme cases that resulted in the disbarment of two contract attorneys and the imposition of a substantial financial penalty for the county.¹

When counties contract with private law firms to provide indigent defense services, compensation levels for attorneys actually providing representation also vary widely. Many firms hire new associates to handle indigent defense representation at low entry wages. The firm provides supervision and support services for the associate and retains a portion of the contract award as profit.

When conflict attorneys are appointed by the court from a list, most are paid on an hourly basis, compensation amounts again vary widely. Rates range from a low of \$35 per hour to a high of \$85 per hour for the same types of cases. Some of the lowest hourly rates are paid in the larger, urban counties, where general attorney costs are the highest.

Trials occur in a small percentage of public defense cases, ranging from about an average of 2% to 9% in various counties. It appears that, in accordance with the standards, almost all counties with contract or list appointment systems recognize the extra burden of trial work and provide extra compensation from about \$200 to \$450 per trial day. Almost all counties also provide for extra compensation for complex felony cases.

The disparity in compensation is not limited to contract-system counties. Counties with non-profit public defender offices also report wide variances in compensation. Some, but not all, county agency public defenders are compensated at parity with the local prosecutors.

The difficulties which most counties have in reaching a reasonable rate of compensation for public defenders have long been observed. As the Blue Ribbon Panel on Criminal Defense noted "for at least the past 15 years, numerous studies, reports, and case decisions have reported deficiencies in the provision of defense

¹ *An Unequal Defense: The failed promise of justice for the poor*, The Seattle Times (April 4, 2004 – April 6, 2004) <http://seattletimes.nwsourc.com/news/local/unequaldefense/>

services in Washington.” The Panel concluded that “[I]nadequate funding is a significant cause of the failures in the quality of indigent defense services in Washington.”

Only about twenty per cent of the counties applying for HB 1542 funding in 2006 stated that they intend to use the funds to increase attorney compensation. Problems with compensation continue to erode the quality of public defense in Washington.

Standard Two: Duties and Responsibilities of Counsel

The legal representation plan shall require that defense services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

Standard Two defines the standard of performance expected from each public defender, which is "professional, skilled" representation consistent with national and state standards and consistent with applicable rules and laws. The challenge in meeting this standard is not merely to include the words in a contract, but actually to create a county system which implements all of the components needed to support this standard of service. Counties with public defender offices are better able to impose office-wide standards of performance consistent with Standard Two, due to their supervisory, training, and support staff resources. Counties with contract/list appointment systems generally lack supervisory systems and thus have more difficulty enforcing this standard.

Many counties include the words of Standard Two in their contracts. A few of the contracts for representation require an annual evaluation, but most contracts do not. Review of the 1542 applications and follow-up with counties make it clear that county officials, who often are not lawyers, may not be familiar with the intricacies of the criminal justice system and are dealing with a myriad of pressing issues competing for their time, attention, and funding.

Often the result is that the responsibility to enforce this standard of performance falls to self-enforcement by the contract or list appointed attorneys, who themselves are caught in a system of too many cases and too little pay. Counsel cannot meet the standard of "professional, skilled" service in a county system where they are under-trained, underpaid and overloaded with a large number of public defense cases and private cases.

Standard Three: Caseload Limits and Types of Cases

The contract or other employment agreement shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.

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

**150 Felonies per attorney per year; or
300 Misdemeanors per attorney per year; or
250 Juvenile Offender cases per attorney per year; or
60 Juvenile dependency clients per attorney per year; or³
250 Civil Commitment cases per attorney per year; or
25 Appeals to appellate court hearing a case on the record and briefs per attorney per year.**

A case is defined by the Office of the Administrator for the Courts as: A filing of a document with the court naming a person as defendant or respondent.

Caseload limits should be determined by the number and type of cases being accepted and on the local prosecutor's charging and plea bargaining practices. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the contracting agency should ensure that attorneys not accept more cases than they can reasonably discharge. In these situations, the caseload ceiling should be based on the percentage of time the lawyer devotes to public defense.

Caseload standards are the best tool available to measure acceptable workload levels. They are critically important to an overview of the needs of the county or state and to the identification of system-wide problems.

The counties' HB 1542 applications show that caseloads in many counties exceed the caseloads stated in Standard Three. Some adult felony caseloads are as high as 222 cases per attorney per year; some juvenile offender caseloads are as high as 575 cases per attorney per year; and some adult misdemeanor caseloads are as high as 762 cases per attorney per year.

Individual counties address caseload issues in numerous ways. One county weighs attorney caseloads which include a mix of case types by assigning felonies, misdemeanors, juvenile and other cases with specific point values, in line with the WSBA caseload standards, and maxing out an attorney at 1,000 points. Many counties give extra "case credits" to account for more difficult, time-consuming cases, such as first degree murder case, and partial credit for less time-consuming actions, such as probation violations.

Counties with public defender offices or non-profit agencies can monitor attorney caseloads better than counties with contract or list appointed attorney systems. By definition, the staff attorneys at public defender offices are devoted full-time to their clients, and the offices are managed to evaluate and contract for reasonable caseloads. While many of these counties' caseloads still exceed the numerical limits set in Standard Three, they are able to monitor cases and work toward the caseload standards.

One public defender office reports a recent concerted effort to formally establish caseload limits and to bring pay scales up to date, using these standards as a guide. The office reported that the changes to the system by addressing standards has benefited both the agency and the county criminal justice system.

In many of the contract/list appointed counties, contracts for public defense state only a generalized reference to caseload limits, and thus there are no defined maximums. Even in counties where numerical limits are set, often no one is "minding the store" by tracking the total public and private number of cases handled by one attorney. While the standard states that "the contracting agency should ensure that attorneys not accept more cases than they can reasonably discharge" and one county's contract specifically prohibits additional public defense contracts, officials typically cannot know the total private and public caseload of an attorney.

A number of counties include generalized case limitation language in their contracts, but ignore the language by entering into multiple contracts with the same attorney, which often results in a total caseload that exceeds the WSBA standard. For example, in 2005, one county contracted with the same attorney for full-time misdemeanor and juvenile caseloads. By obtaining two contracts, and thus carrying a double caseload, the attorney raised his compensation level to \$87,000 for gross pay and all overhead expenses--allowing a salary equivalent level of about \$43,500. Under the contracts, the attorney was then obligated to cover both caseloads, to the detriment of the quality of the representation he could provide to indigent clients.

Caseloads directly impact the quality of services provided. A survey of Washington judges, prosecutors, public defenders, and court administrators by the WSBA's Blue Ribbon Panel reported that

The majority of respondents indicated that the caseloads of public defense attorneys in their jurisdictions never or only sometimes allow the attorneys to give each client the time and effort necessary to ensure effective representation or that they did not know whether the caseloads allow this level of attention by the defense attorneys. *Blue Ribbon Panel Report*, at p.12.

Standard Four: Responsibility for Expert Witnesses

Reasonable compensation for expert witnesses necessary to preparation and presentation of the defense case shall be provided. Expert witness fees should be maintained and allocated from funds separate from those provided for defender services. Requests for expert witness fees under Court Rule 3.1 f should be made through an ex parte motion. The defense should be free to retain the expert of its choosing and in no cases should be forced to select experts from a list pre-approved by either the court or the prosecution.

Although expert services are not necessary in the vast majority of cases, they are essential to effective representation in some cases. Court rules allow the attorney to apply to the court for authorization of the expenditure of county funds for experts, and RCW 10.101.060(1)(a)(vi) specifically requires counties to identify funding for experts “for which public defenders may file ex parte motions.” The Washington State Supreme Court emphasized in *State v. Punsalan*, 156 Wn.2d 875, last year that experts must be paid at public expense if the court finds that the services are necessary and the defendant is financially unable to obtain them.

Experts are necessary in a wide variety of situations. A psychological expert may be needed to give an opinion on the defendant’s competency to stand trial or to explore a diminished capacity and/or insanity defense. A ballistics expert may be needed to examine the weapon used in a crime. An accident reconstruction expert can explain the causes of a collision. A DNA expert can testify on identification evidence. Such experts critical to the defense can prevent the erroneous conviction of an innocent person.

Five of the smaller counties in Washington specifically noted in their 1542 applications that they intend to use their HB 1542 funds to provide for expert services.

Examination of contracts submitted to Washington State OPD with the 1542 applications shows that approximately half the counties specifically provide for additional county payment for expert services as authorized by the court. Many attorneys file motions pursuant to the standard and rule. But in a number of counties, requests for experts are discouraged. One district court contract, for example, requires the contractor to pay out of the contractors’ monthly compensation for expert services which are “necessary to an adequate preparation of the defense case,” but allows the contractor to petition the court for expert and investigator services “in the event of an extraordinary case.” Public defenders in diverse counties report informal, but locally “understood” limitations that experts should be rarely requested, as they are generally not considered to be affordable or necessary. Such informal constraints can curtail critical information and evidence in cases where a defense expert would have made a difference.

Tracking actual amounts allocated by courts for expert (and investigative) services is hampered by the accounting practice of lumping these costs with the general

county court budget. A critical recent improvement is the implementation of public defense categories announced by the State Auditor's Office last year, at the request of the Administrative Office of the Courts, which provide for a breakout of these costs. As counties transition to the use of these "BARS" codes, evaluating the cost and use of experts in these cases will improve.

Standard Five: Administrative Expenses

Contracts for public defense services should include the administrative costs associated with providing legal representation. These costs may include travel, telephones, law library, financial accounting, case management systems, the reporting requirements imposed by these standards, and other costs necessarily incurred in the day to day management of the contract.

In a large number of the counties lacking public defender offices, this standard is often ignored. To provide the “professional, skilled” services required by Standard Two, attorneys need to be compensated adequately to cover the basic administrative costs of conducting business. However, the low compensation rates often paid to contract and list-appointed attorneys mean they cannot afford professional offices or reliable telephone systems.

Public defense clients’ constitutional right to adequate representation includes a sufficient amount of confidential consultation with their attorneys. This consultation is so important that convictions have been reversed on the basis of ineffective assistance of counsel when the public defense attorney has failed to consult adequately with the client. *State v. S.M.*, 100 Wn. App. 401 (2000).

Due to widespread underfunding of overhead expenses, many attorneys have nowhere to consult with clients, and their only contact is a whispered conversation carried on in the hallway or spectator area of a packed courtroom while the judge deals with other cases. Similarly, many contract and list-appointed attorneys lack sufficient funds to pay for a reliable telephone system, instead relying on cell phones must be often turned off, or voicemail systems. The failure of attorneys to communicate adequately with clients is a common basis for client complaints to the Washington State Bar Association.

Over half the contracts examined state that administrative expenses are the responsibility of the attorney. The general rule of thumb is that overhead costs (including staff) for an average attorney office total about half the amount charged by the attorney. As discussed earlier, public defense attorney pay can be as low as \$19,600 per year for the equivalent of a full misdemeanor caseload of 300 cases per year; commonly, attorneys are paid from \$30,000 to \$70,000 for juvenile or felony caseloads that meet or exceed the caseload standards. Obviously, these compensation rates cannot be said to cover normal administrative expenses.

A few county contracts specifically set out that the attorneys may submit necessary long-distance billing to the county for payment. One innovative contract provides an office for the defender in the county building, with the attorney responsible for furnishings and equipment.

Standard Six: Investigators

Public defender offices, assigned counsel, and private law firms holding contracts to provide representation for poor people accused of crimes should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every four attorneys.

Investigators have an essential role in public defense. Just as the state benefits from the investigative work of the police and forensic laboratories in the preparation of charging documents and prosecution of defendants, public defense attorneys must have similar investigative assistance to prepare an adequate defense. While the public defender meets with the client, researches issues, prepares pleadings, and appears in court, the investigator interviews prosecution witnesses and tracks down and interviews defense witnesses who may have recollections of events very different from the recollections of the prosecution's witnesses. Investigators visit crime scenes, take photographs and measurements, follow up on leads, assist with locating appropriate forensic experts, and generally make it possible for a defendant to present a coherent, substantiated defense.

The structure of most public defense contracts reveals that Standard Six's one to four investigator/attorney ratio is not being met in the majority of counties. In counties with public defender offices, the investigative function is included within the defender contract, but not to the extent of the standard.

Provisions for investigator services vary widely. In one third of the contract counties, the contract provides that the county will reimburse the attorney for any court ordered investigative service. One county provides an investigator at no cost to the public defender. Another county contract provides an additional \$72.14 per felony case for investigator services and allows the attorney to petition the court if additional investigator funding is necessary. One county contract states that the attorney must pay for the investigator, unless under "exceptional circumstances" the court orders investigative services.

Twelve counties specifically listed improving the availability of investigator services as one of the intended uses of the new 1542 state funding. Two counties indicated that they intend to use the funds to hire in-house investigators for their public defender offices.

Standard Seven: Support Services

The legal representation plan should provide for adequate numbers of investigators, secretaries, paralegals, social work staff, mental health professionals and other support services. These professionals are essential to ensure the effective performance of defense counsel during trial preparation, in the preparation of dispositional plans, and at sentencing.

- 1. Secretaries - At least one full-time secretary should be employed for every four staff attorneys. Fewer secretaries may be necessary, however, if the agency has access to word processing or overload secretaries, or other additional staff performing clerical work.**
- 2. Social Work Staff - Social work staff should be available to assist in developing release, treatment, and dispositional alternatives.**
- 3. Mental Health Professionals - Each agency should have access to mental health professionals to perform mental health evaluations**

Adequate allocation of resources for support services allows cost-effective use of non-lawyer staff to perform necessary tasks in legal representation. Secretaries (or legal assistants) prepare files, contact witnesses, finalize pleadings, and generally serve to interface with clients--making appointments with clients, reminding them of hearing dates, and so forth--all of which frees up attorney time for representation tasks.

Social workers and mental health professionals provide invaluable support services to work with clients and direct them to treatment services or other programs which will benefit them in dealing with their criminal charges. Few public defense attorneys have the time or expertise to navigate the maze of state and federal social programs which could help their clients. Yet, such programs can have substantial impact on the sentence ultimately imposed on a defendant and his or her chances to avoid repeat charges.

The counties with public defender offices more nearly comply with this standard for adequate support services. Secretaries (or legal assistants) provide support for staff attorneys and five offices have social workers on staff to assist attorneys.

In sharp contrast to the public defender offices, counties with contract attorneys often do not address necessary support services in their contracts. If addressed, these services are to be provided by the attorney within his or her compensation. In counties with contract/list attorneys, there is little ability to monitor whether or not the attorney is effectively investing in support services. The economic reality of many low-paying contracts is that any support services are simply unaffordable.

Standard Eight: Reports of Attorney Activity and Vouchers

The legal representation plan shall require that the defense attorney or office maintain a case-reporting and management information system which includes number and type of cases, attorney hours and disposition. This information shall be provided regularly to the Contracting Authority and shall also be made available to the Office of the Administrator of the Courts. Any such system shall be maintained independently from client files so as to disclose no privileged information.

A standardized voucher form shall be used by assigned counsel attorneys seeking payment upon completion of a case. For attorneys under contract, payment should be made monthly, or at times agreed to by the parties, without regard to the number of cases closed in the period.

Keeping records on each case handled – type of case, hours spent, disposition – and submitting that information to the contracting authority on a regular basis makes management of caseloads possible. Without such records, courts and county officials have little information on which to evaluate whether the county – and the indigent defendants – are receiving adequate services under the contract.

Reporting requirements in the state vary with the types of county systems. Most counties require monthly or quarterly reports. Some reports are detailed as to hours spent on individual cases, type of cases, number of hearings, number of trials, and disposition. In one county, such a detailed report is presented quarterly to the presiding judge. In most counties, the report is provided to county staff. Some reports are simply a monthly summary of services provided. If attorneys are appointed off a list or are paid per case, a monthly invoice will be needed for payment, but the level of detail required may be limited.

In smaller counties, where attorneys typically contract for the entire caseload of a court or a substantial part of that caseload, contracts provide for a lump sum annual compensation apportioned per month and these contracts often include no reporting requirement. However, two counties explicitly require that the attorney keep records; two require a voucher or claim submitted for reimbursable expenses or extraordinary casework; and one contract specifies that the county may request reports if needed.

One county with a public defender office requires an annual report, another requires a quarterly report, and a third county which contracts with non-profit offices requires detailed monthly reports, in addition to quarterly expenditure reports and year-end attorney case assignment reports and financial reports. The county public defender agencies within county government participate in the regular report requirements of the county budget planning cycle.

Standard Nine: Training

Attorneys providing public defense services should participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice.

In offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held to inform them of office procedure and policy. All attorneys should be required to attend regular in-house training programs on developments in criminal law, criminal procedure and the forensic sciences. Attorneys in civil commitment and dependency practices should attend training programs in these areas. Offices should also develop manuals to inform new attorneys of the rules and procedures of the courts within their jurisdiction.

Every attorney providing counsel to indigent accused should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes.

Continuing training is essential to effective representation of indigent criminal defendants. New legislation defining criminal behavior and creating a myriad of sentencing consequences, as well as new case law interpreting statutes and constitutional provisions, requires public defenders to constantly update their working knowledge of the law in order to provide effective representation.

Reportedly, most public defender offices provide mentoring and training. However, in the majority of counties where public defenders are contract or list appointed attorneys, the Standard's goal of "regular training," a minimum of seven hours per year continuing education related to their area of practice and trial advocacy training, can be difficult to access. Criminal defense attorney organizations, such as the Washington Association of Criminal Defense Lawyers and the Washington Defender Association, have long provided a variety of quality courses that these contract/list attorneys can take. However, not all participate; the reality is that most criminal law continuing education courses are held in urban areas. Therefore, training opportunities have been lacking for public defense attorneys in many counties.

Through funding provided by the Legislature under SB 5454 for training in fiscal year 2006, Washington State OPD held six regional training programs for public defenders around the state – in Kennewick, Spokane, Wenatchee, Poulsbo, Ocean Shores, and Vancouver. The two-day programs, which were offered free of charge, brought public defenders from neighboring counties to hear presentations by some of the most able local attorneys, discuss issues unique to their public defense practice, and connect with other defenders in the area. The three hundred-plus public defense attorneys who attended gave overwhelmingly positive evaluations, and many asked that similar regional trainings be repeated.

Review of the public defense contracts submitted by the counties reflects that only a few make training an explicit requirement (although one county in which the

public defenders also serve as guardians ad litem (GALs) did explicitly require GAL training). Under RCW 10.10.050, counties and cities must require that attorneys who provide public defense services attend Washington State OPD approved training. This is a requirement that all counties who applied for HB1542 funding, except one, agreed to implement in 2007.

Standard Ten: Supervision

Each agency or firm providing public defense services should provide one full-time supervisor for every ten staff lawyers or one half-time supervisor for every five lawyers. Supervisors should be chosen from among those lawyers in the office qualified under these guidelines to try Class A felonies. Supervisors should serve on a rotating basis, and except when supervising fewer than ten lawyers, should not carry caseloads.

Supervisors provide critical mentoring and oversight as attorneys work through their caseloads. Supervision by a more experienced attorney can assist newer attorneys in acquiring important information about conducting a practice in a particular jurisdiction. Several counties' ordinances have adopted the ten to one ratio and one ordinance states that the county agency shall provide sufficient supervision as determined by the agency director. Counties with public defender agencies or non-profit defender organizations are most likely to work to comply with the standard, though few actually achieve supervision by attorneys who carry no caseload themselves.

While supervision is possible in larger counties where a public defender agency exists or a sufficiently large firm holds a county contract, such oversight rarely occurs in smaller counties where many sole practitioners provide public defense services. Some firms contracting for public defense representation provide mentoring and supervision for newer attorneys.

In most counties, the issue of supervision is not addressed in contracts. In two counties, the county ordinance specifically notes that due to the county's small overall caseload size, supervision cannot be justified, but does provide for monitoring and evaluation. Several ordinances simply omit any reference to supervision, although one such county does include a vague reference in its contract, requiring the contractor to "provide" for the supervision of its attorneys, as well as their training, monitoring and evaluation.

Standard Eleven: Monitoring and Evaluation of Attorneys

The plan for public defense services should establish a procedure for systematic monitoring and evaluation of attorney performance based upon publicized criteria. Supervision and evaluation efforts should include review of time and caseload records, review and inspection of transcripts, in-court observations, and periodic conferences.

Performance evaluations made by a supervising attorney should be supplemented by comments from judges, prosecutors, other defense lawyers and clients. Attorneys should be evaluated on their skill and effectiveness as criminal lawyers or as dependency or civil commitment advocates.

Monitoring and evaluation of attorney performance is necessary to the consistent implementation of public defense standards of performance. Standard Eleven addresses reasonable methods to conduct such monitoring and evaluation: review of time and caseload reports, reviewing transcripts of hearings and trials, in-court observations and periodic conferences. Yet, outside of the defender agencies, regular monitoring and evaluation is spotty.

Over one-third of the counties do not address monitoring in their contracts. A few counties lump monitoring together with the requirement that the contractor take sole responsibility for the training and supervision of attorneys providing public defense under the contract. Several counties' contracts state that the contracting attorney *may* be monitored. One contract sets out a detailed plan for annual evaluation by judges, and states that any negative reviews must be addressed with a plan for correction.

As of the end of 2006, at least three counties plan to use their 1542 allocations to address the issue of monitoring and evaluation by funding new attorney/administrator positions to oversee and work to improve the provision of public defense services. Clark County's new Indigent Defense Coordinator has already begun implementing contracts based on careful assessments of attorney qualifications, dealing with client complaints, monitoring attorney performance, and planning evaluations.

In most of the state, however, ordinance and contract provisions authorizing monitoring are not enforced. The WSBA's Blue Ribbon Panel on Criminal Defense reported that few of justice system survey respondents – only 6.5%--believed that public defense attorneys were regularly evaluated or monitored. The Panel concluded, "There is currently no effective oversight by courts or administrators in some jurisdictions to ensure that indigent defendants receive constitutionally effective representation." Washington State OPD's review of county contracts confirms that, outside of defender agencies, the Blue Ribbon Panel's findings are still painfully accurate.

Standard Twelve: Substitution of Attorneys or Assignment of Contract

The attorney engaged by local government to provide public defense services should not subcontract with another firm or attorney to provide representation and should remain directly involved in the provision of representation. If the contract is with a firm or office, the contracting authority should request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet minimum qualifications. The employment agreement shall address the procedures for continuing representation of clients upon the conclusion of the agreement.

This standard admonishes against subcontracting and notes that the contractor should be directly involved in representing the client. The danger to be avoided is subcontracting with less qualified attorneys who may provide ineffective assistance without the involvement of the contracting attorney.

Most counties with a contract public defense system address subcontracting either in their ordinance or their contracts, permitting subcontracting with the approval of the county, the court or both. Several counties make no mention of subcontracting. One county allows the contractor to “employ” co-counsel. One county contracts only with individual attorneys, even if they are affiliated with a law firm, and these attorneys are prohibited from sub-contracting.

One county contract reflects a troubling practice of mandating that the contractor subcontract with non-affiliated attorneys who can provide conflict counsel. Under this contract, the contractor and subcontractors should try to resolve conflicts among themselves so the county does not need to incur additional expense for any other conflict counsel. Such a practice where the contractor bears the cost of conflict counsel is prohibited under RCW 10.101.060(1)(b) since it serves as a disincentive to recognize and remedy a potential conflict of interest.

Standard Thirteen: Limitations on Private Practice of Contract Attorneys

Contracts for public defense representation with private attorneys or firms shall set limits on the amount of privately retained work which can be accepted by the contracting attorney. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

This standard, adopted to ensure that caseload limits are realized, is largely ignored in many counties. In the twenty-four counties that provide public defense services through contract or list appointments, little limitation of private practice is required or enforced. Attorneys frequently maintain a private practice, which results in their carrying considerably more cases than are recommended as full public defense caseloads in these standards. It is commonly recognized that many public defense attorneys take contracts to “pay their overhead expenses” while they rely on private clients for their take-home pay. This practice allows counties to continue to pay low compensation rates for public defense contracts. The result is that indigent defendants may not receive representation in accordance with professional performance norms or Standard Two, Duties and Responsibilities of Counsel.

Often county contracts will require that an attorney “represents and warrants that Attorney’s private law practice and personal schedule will not interfere with Attorney’s ability to timely and efficiently perform . . . services. . . .” However, since most counties lack specific oversight of the public defense contracts or list attorneys, even this minimal requirement is not enforced.

With HB 1542’s amendments passed in 2005, Chapter 10.101 RCW now requires that contracting attorneys report to the county “hours billed for nonpublic defense legal services,” and include “number and types of cases.” Washington State OPD’s HB 1542 application specifically asks counties to confirm that they will begin to require this reporting.

Despite the prevalence among public defense attorneys of carrying significant private caseloads, one-quarter of the counties applying for funding reported that at least at the time of their applications for state funds, they do not plan meet this requirement.

Asking counties and attorneys to commit to a caseload at standards requires a fair rate of compensation for public defense attorneys so they can make a middle class living by carrying a reasonable caseload. As recognized by HB 1542, the counties, by themselves, have not been able to allocate sufficient funding and state dollars are needed to ensure a fair rate of pay. Otherwise, it seems apparent that caseload limitation standards will continue to be largely disregarded.

Standard Fourteen: Qualifications of Attorneys

In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services should meet the following minimum professional qualifications:

1. (A) Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and (B) Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

2. Trial attorneys' qualifications according to severity or type of case: (A) Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case shall meet the following requirements: [i] The minimum requirements set forth in Section 1; and [ii]. at least five years criminal trial experience; and [iii] have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and [iv] have served as lead or co-counsel in at least one jury trial in which the death penalty was sought; and [v] have completed at least one death penalty defense seminar within the previous two years. (B) Adult Felony Cases - Class A. Each staff attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements: [i] Minimum requirements set forth in Section 1, and [ii] Either: [a] has served two years as a prosecutor; or [b] has served two years as a public defender; or [c] has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in five felony cases that have been submitted to a jury. (C) Adult Felony Cases - Class B Violent Offense or Sexual Offense. Each attorney representing a defendant accused of a Class B violent offense or sexual offense as defined in RCW 9A.20.020 shall meet the following requirements: [i] Minimum requirements set forth in section 1, and [ii] Either: [a] has served one year as prosecutor; or [b] has served one year as public defender; and [c] has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury. (D) Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each staff attorney representing a defendant accused of a Class B felony not defined in c above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements: [i] Minimum requirements set forth in section 1, and [ii] Either: [a] Has served one year as a prosecutor; or [b] Has served one year as a public defender; or [c] has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and iii. Each attorney shall be accompanied at his or her first felony trial by a supervisor. (E) Juvenile Cases - Class A - Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements: [i] Minimum requirements set forth in section 1, and [ii] Either: [a] has served one year as a prosecutor; or [b] has served one year as a public defender; or [c] has been trial counsel alone of record in five juvenile Class B and C felony trials; and [iii] Each attorney shall be accompanied at his or her first juvenile trial by a supervisor. (F) Juvenile Cases - Classes B and C. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements: [i] Minimum requirements set forth in Section 1; and [ii] Either: [a] has served one year as a prosecutor; or [b] has served one year as a public defender; or [c] has been trial counsel alone in five misdemeanor cases brought to a final resolution; and [iii] Each attorney shall be accompanied at his or her first juvenile trial by a supervisor. (G) Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1. (H) Dependency Cases. Each attorney representing a client in a dependency

matter shall meet the following requirements: [i] The minimum requirements as outlined in Section; and [ii] Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation. (I) Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements: [i.] Minimum requirements set forth in Section 1; and [ii] Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and [iii] Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either: [a] served one year as a prosecutor, or [b] served one year as a public defender, or [c] been trial counsel in five civil commitment probable cause hearings. (J) In order to advance from one qualification category to the next, an attorney must participate in a supervised trial of the next higher category.

3. Appellate Representation. Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements: (A) The minimum requirements as outlined in Section 1; and (B) Either: [i] has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or [ii] has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work. [iii] Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions.

4. Legal Interns. (A) Legal interns must meet the requirements set out in APR 9. (B) Legal interns shall receive training pursuant to APR 9 and Standard Nine, *Training*.

The standard setting out minimum qualifications for representing indigent criminal defendants ensures that each defendant will be represented by an attorney who has completed a reasonable number of criminal cases in related areas. Such qualifications ensure familiarity with the procedures, processes and timelines critical to effective advocacy in criminal cases.²

Yet, only about one-third of Washington counties are served by a public defender agency or non-profit firm or have contracts which adopt this standard. A few county ordinances have standards which somewhat mirror Standard Fourteen, but set far vaguer qualifications. These may, for example, not require two years of defense or prosecutorial experience for handling Class A felonies, but rather require experience as primary or secondary counsel in an unspecified "significant number" of serious and complex felony cases which went to a jury. One county ordinance includes the ambiguous requirement that any associating attorney be qualified by training and experience to handle the cases. Several county ordinances require that contractors who handle public defense must merely be licensed by the WSBA to practice as an attorney, with no further experience in criminal law required.

² It should be noted that the specialized area of death penalty is also addressed by court rules adopted by the Washington State Supreme Court, which created a Supreme Court procedure to screen, qualify, and appoint attorneys for representation in death penalty cases.

The lack of consistent enforcement of basic qualifications for public defense representation was reflected in the WSBA's Blue Ribbon Panel report, which reported that fewer than half the respondents to the Panel's survey said the attorneys in their jurisdictions met the basic qualifications set out in Standard Fourteen. Two-thirds of the county and city administrators indicated their belief that Standard Fourteen's qualifications requirements were not applicable in their jurisdictions. The dismissal of basic qualifications requirements for public defense attorneys appears to be undermining the quality of representation in a number of Washington State counties.

Standard Fifteen: Disposition of Client Complaints

The legal representation plan shall include a method to respond promptly to client complaints. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the contracting authority or public defense administrator should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week.

One important measure of the effectiveness of any service provider is the type of complaints received from clients and how those complaints are handled. Certainly in all areas of government contracting, feedback on the quality of services provided should be valued and addressed.

Unlike private clients, public defense clients generally cannot fire their attorneys. In public defense cases, in which individuals' liberty or other fundamental rights are at stake, investigating and addressing client complaints is an important part of monitoring quality. Such feedback to public defense agency directors or monitoring authorities provides substantive information about attorney performance. However, half of the county contracts reviewed have no requirement for the processing of client complaints.

Standard Sixteen: Cause for Termination or Removal of Attorney

Contracts for defense services shall include the grounds for termination of the contract by the parties. Termination of an attorney's contract should only be for cause. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of the standards herein addressed.

The representation in an individual case establishes an inviolable attorney-client relationship. Removal of counsel from representation therefore normally should not occur over the objection of the attorney and the client.

All county contracts for public defense services include a termination clause. Most contracts require a performance related reason or cause and allow for removal only after notice to the attorney. Examples of cause for termination of a public defense contract include disbarment, physical incapacity, ineffective or substandard performance, failure to meet reporting requirements, or other unethical or illegal behavior.

Counties with multi-year contracts sometimes include provisions for early termination without cause on 30, 60 or 90 day notice. One rationale for these “no cause” termination provisions is that they are intended to limit the county’s long-term financial obligations in case of fluctuations in revenue from year to year.

Standard Seventeen: Non-discrimination

Neither the Contracting Authority, in its selection of an attorney, firm or agency to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or handicap. Both the contracting authority and the contractor shall comply with all federal, state, and local non-discrimination requirements.

This standard mandates compliance with federal, state and local non-discrimination requirements in employment practices and direct service delivery. Inclusion of this language in contracts appears to be good statewide; a significant number of contracts reviewed for this report contain language prohibiting discriminatory practices, primarily in employment although some do adopt the standard as to representation. Contract language varies from a basic requirement of compliance with applicable state and federal law to detailed contract clauses applying to both representation and employment practice. Some require access to the contracting attorney's files to ensure compliance.

In the dozen plus counties that have adopted public defense ordinances, several have incorporated the ordinance language by reference in their contracts. Virtually all of the agencies or non-profit organizations providing representation have non-discrimination clauses in their contracts with outside counsel. One county requires contracting attorneys to comply with the county's non-discrimination policy. More than half of the counties without non-discrimination clauses in their 2005 contracts were smaller, rural counties.

Standard Eighteen: Guidelines for Awarding Defense Contracts

The county or city should award contracts for public defense services only after determining that the attorney or firm chosen can meet accepted professional standards. Under no circumstances should a contract be awarded on the basis of cost alone. Attorneys or firms bidding for contracts must demonstrate their ability to meet these standards.

Contracts should only be awarded to a) attorneys who have at least one year's criminal trial experience in the jurisdiction covered by the contract (i.e., City and District Courts, Superior Court or Juvenile Court), or b) to a firm where at least one attorney has one year's trial experience.

City attorneys, county prosecutors, and law enforcement officers should not select the attorneys who will provide indigent defense services.

RCW 10.101.005 states the legislative finding that “effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.” Awarding a public defense contract on the basis of cost alone undermines effective legal representation because such a practice disregards all of the quality controls set out in the standards.

The recent experience of one eastern Washington county in substituting inexperienced, low-bidding attorneys for experienced, long-serving contract attorneys illustrates the disruptive impacts of this practice. The low-bidder set up operation by hiring new law graduates, installing them in an “office” without staff support, computers, or library materials, and exiting the county to his private practice in an adjoining county. After numerous court appearances were missed, the court refused to appoint the new public defense contractor to cases. As a result, the county had to terminate the low-bidders contract and re-negotiate contracts with local public defense attorneys. After months of disorder, court continuances in criminal cases and delays in civil cases, and systematic failures to provide adequate counsel to indigent persons facing the loss of their liberty, the public defense system with experienced attorneys was restored.

The Report of the WSBA’s Blue Ribbon Panel noted that fewer than half of their survey respondents reported that contracts were consistently awarded after a determination of the firm’s or attorney’s qualifications.

COUNTY REPORT

Introduction

Methodology and data reporting

This county report presents information on funding and caseload levels in the individual counties. Thirty-eight counties submitted HB 1542 applications. Each applying county provided 2005 data regarding criminal filings, public defense assignments, and costs of public defense. Washington State OPD reviewed the data provided, consulted with the counties where questions arose, and used the information to prepare this report.³

Initial data from the counties varied widely due to differing case-counting and reporting practices. There is no standard method; systems differ, sometimes even within individual counties. Some are based on “points” or “credits” rather than cases, while others assign differing values to certain case types. Some counties do not keep caseload records because one law firm or attorney is responsible for 100 per cent of the cases assigned in that practice area.

The manner in which jurisdictions deal with post-conviction hearings such as probation violations (PVs) also impacts caseload calculations.⁴ Generally, PVs are less time-consuming than new cases. Some counties count PVs as a case; some do not count or report them at all; and others count them as a fraction of a case (often one-third).

Methods of accounting for and tracking cases assigned to these public defense providers are as varied as the systems. For example, many counties rely on the attorneys to cover all cases assigned and do not have any system for tracking the number of assigned cases; some counties lump together juvenile offender and Becca cases assigned to public defenders and some counties do not. Similarly, the tracking of dollars spent on public defense is varied, and includes different elements from county to county. These variations make a comparative analysis challenging and some conclusions tentative. Nevertheless, the data gathered during the HB 1542 application process presents a valuable picture of public defense in all of Washington’s counties.

In preparing the county data sheets which follow, Washington State OPD used information submitted as part of the county applications and data from the Administrative Office of the Courts caseload reports. Washington State OPD’s public defense service managers contacted the counties to clarify and augment data where

³ See Appendix A: Application for Public Defense Funding

⁴ PVs are proceedings in which convicted persons on probation are accused of non-compliance with their conditions of probation. Because they are subject to further sanctions, including incarceration, they are eligible for court-appointed counsel.

necessary. After the county data sheets were prepared, they were sent to each county for review. Each county had an opportunity to make additional county comments and input to the final product. County staff members were gracious and generous with their time during this process, and this report would not have been possible without their help.

Glossary

County Profile

2005 Population: Total county population as reported in the 2005 Data Book, Washington State Office of Financial Management

Percent below poverty level: Percent of county population below the federal poverty level as reported in the 2003 census, U.S. Bureau of the Census.

2006 1542 distribution: The county's allocation of the HB 1542 state funds appropriation, as determined by the statutory distribution formula.

I. 2005 Statistics

1. Total adult criminal cases per 1000 population: The total number of new trial level adult felony and misdemeanor criminal cases (including misdemeanors filed in municipal courts), as reported by the county to the state Administrative Office of the Courts divided by the county population as expressed in thousands.
2. Amount spent for public defense: The county-reported total dollar amount spent for public defense representation during 2005.
3. Amount spent per capita: The county-reported total dollar amount spend for public defense representation divided by the total county population. **Caution:** the amount spent per capita is not directly comparable county to county. This per capita amount is influenced by a number of variables, including geography, the number of cases filed, the number of major cases filed, the number of attorneys practicing in the county, local attorney availability and the county's poverty and case filing rates.

II. Adult felony

1. New adult superior court cases filed: The number of new (non-probation violation) adult Superior Court cases filed during 2005 as reported by the county to the state Administrative Office of the Courts.
2. New adult superior court cases per 1000 population: The number of new adult Superior Court cases filed divided by the county population as expressed in thousands.
3. Number of new cases assigned to counsel: The county-reported number of new adult Superior Court cases assigned to public defense counsel during 2005.
4. Percent of new cases assigned to counsel: Total new adult Superior Court cases filed divided by the county-reported number of new cases assigned to counsel and expressed as a percentage.

5. New cases assigned per FTE: The number of new adult Superior Court cases assigned to one full-time equivalent defense attorney.

III. Adult misdemeanor

1. New county misdemeanor cases filed: The number of new (non-probation violation) District Court cases filed during 2005 as reported by the county to the state Administrative Office of the Courts.
2. Total new misdemeanor cases filed in county: The total number of new misdemeanor (non-felony) cases filed in all courts in the county, including municipal courts, during 2005 as reported by the county to the state Administrative Office of the Courts.
3. Total new misdemeanor cases per 1000 population: The total number of new misdemeanor cases filed during 2005 divided by the county population as expressed in thousands.
4. Number of new cases assigned to counsel by county: The county-reported number of new adult District Court cases assigned to public defense counsel during 2005.
5. New cases assigned per FTE: The total number of new adult misdemeanor cases assigned to one full-time equivalent defense attorney.

IV. Juvenile offender

1. New juvenile offender cases filed: The number of new (non-probation violation) juvenile offender cases filed during 2005 as reported by the county to the state Administrative Office of the Courts.
2. New juvenile offender cases per 1000 population: The total number of new juvenile offender cases filed during 2005 divided by the county population as expressed in thousands.
3. Number of new cases assigned to counsel: The county-reported number of new juvenile offender cases assigned to public defense counsel during 2005.
4. Percent of new cases assigned to counsel: Total new juvenile offender cases filed divided by the county-reported number of new cases assigned to counsel and expressed as a percentage.
5. New cases assigned per FTE: The total number of new juvenile offender cases assigned to one full-time equivalent defense attorney.

ADAMS COUNTY

2005 Population:	17,000
Percent below poverty level in 2003:	15.8%
2006 1542 distribution:	\$12,723

Adams County delivers indigent public defense representation through a contract system. The county contracts with a sole provider who handles 100 percent of the cases in Superior and District Court. That attorney subcontracts with other providers for overflow representation and for assumption of a specific portion of the required coverage. In addition, for all types of conflict cases, the court appoints separate counsel from a list.

Adams County officials indicate they will consult with the current contract public defender as to appropriate uses for the county's 1542 funds.

2005 Statistics

Total adult criminal cases per 1000 population	96.7
Amount spent for public defense	\$314,334
Amount spent per capita	\$18.49

Adult felony

New adult superior court cases filed	189
New adult superior court cases per 1000 population	11.1
Number of new cases assigned to counsel	162
Percent of new cases assigned to counsel	85.7%

Adult misdemeanor

New county misdemeanor cases filed	1031
Total new district and municipal court misdemeanor cases filed in county	1455
Total new misdemeanor cases per 1000 population	85.6
Number of new cases assigned to counsel by county	700

Juvenile offender

New juvenile offender cases filed	88
New juvenile offender cases per 1000 population	5.2
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

¹ The County did not report the total number of new juvenile offender cases assigned; accordingly, the number and percentage of new cases assigned to public defense counsel could not be determined.

ASOTIN COUNTY

Population:	20,900
Percent below poverty level in 2003:	14.5%
2006 1542 distribution:	\$13,717

Asotin County delivers public defense representation through a contract system. During 2005, virtually all of the contracted public defense services in Asotin County were handled by two attorneys. In Superior Court, the county contracts with two different attorneys, who are each responsible for 50 percent of the cases assigned. In District Court, one of the same providers is responsible for the entire caseload with the exception of conflict cases, for which the court appoints separate counsel from a list.

Juvenile offender and dependency and termination cases are handled by two attorneys with each accepting 50 percent of the caseload.

Asotin County officials indicate that the county's 1542 funds will be used to increase compensation for court-appointed counsel, increase expert witness fees, and provide investigation in criminal cases.

2005 Statistics

Total adult criminal cases per 1000 population	67.1
Amount spent for public defense	\$154,000
Amount spent per capita	\$7.37

Adult felony

New adult superior court cases filed	227
New adult superior court cases per 1000 population	10.9
Number of new cases assigned to counsel	199
Percent of new cases assigned to counsel	87.7%

Adult misdemeanor

New county misdemeanor cases filed	575
Total new district and municipal court misdemeanor cases filed in county	1178
Total new misdemeanor cases per 1000 population	56.4
Number of new cases assigned to counsel by county	116

Juvenile offender

New juvenile offender cases filed	119
New juvenile offender cases per 1000 population	5.7
Number of new cases assigned to counsel	83
Percent of new cases assigned to counsel	69.7%

BENTON COUNTY

2005 Population:	158,100
Percent below poverty level in 2003:	10.1%
2006 1542 distribution:	\$77,882

Benton County provides public defense representation through a contract system under which the court appoints defense counsel from a list of contract attorneys. Each attorney's contract specifies a maximum caseload. During 2005, the court appointed adult felony cases to 11 attorneys, District Court cases to 10 attorneys, and juvenile offender cases to four attorneys. Conflict cases are distributed among the contracted attorneys as needed.

Each Superior Court attorney's maximum contract caseload is 150 felony cases. Two of the District Court attorneys have maximum caseloads of 600 cases each while the others have a maximum of 400 cases per year.

Juvenile offender cases are handled through a bi-county (Benton and Franklin counties) panel appointment system. The two counties contract with eight different attorneys to provide indigent defense services to all youth charged with a criminal offense. These contracts provide for a specific number of juvenile offender cases per year; assigned cases are counted through a case-weighting system assigning differing values to specific case types.

Four other attorneys each contract for specific case types including mental health involuntary commitment, civil contempt, drug court and Becca cases.

Benton County officials indicate the county's 1542 funds will be expended to enhance attorney compensation.

2005 Statistics

Total adult criminal cases per 1000 population	62.5
Amount spent for public defense	\$2,272,907
Amount spent per capita	\$14.38

Adult felony

New adult superior court cases filed	1732
New adult superior court cases per 1000 population	10.9
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

Adult misdemeanor

New county misdemeanor cases filed	2975
Total new district and municipal court misdemeanor cases filed in county	8175
Total new misdemeanor cases per 1000 population	51.7
Number of new cases assigned to counsel by county	N/A ¹

¹ The County did not provide individualized caseload totals for each attorney, but instead provided the total maximum number of cases contracted for, which was greater than the actual number of case filings. Accordingly, the total number and percentage of new cases assigned to counsel could not be determined.

Juvenile offender

New juvenile offender cases filed	1095
New juvenile offender cases per 1000 population	6.9
Number of new cases assigned to counsel	N/A ²
Percent of new cases assigned to counsel	N/A ²

² Under the Benton and Franklin Counties bi-county panel system, caseload reporting is not differentiated between counties. Accordingly, the number and percentage of new cases assigned to counsel and assigned per FTE could not be determined.

CHELAN COUNTY

Population:	69,200
Percent below poverty level in 2003:	12.6%
2006 1542 distribution:	\$37,425

In 2005, Chelan County provided all public defense representation through a flat fee contract with one private law firm. The law firm sub-contracted with seven other private law offices to handle portions of the cases assigned, including conflict cases. Four of the sub-contracts were paid on a monthly basis and three paid by the hour. Investigative services were available to the public defense attorneys on a case-by-case basis through court order.

On January 1, 2007, Chelan County began contracting with a newly established non-profit public defender agency. The agency's director and supervising attorney are responsible for supervising staff attorneys and handling client complaints. In addition, the agency has in-house, bilingual investigative and social worker services. The county is maintaining a list of private attorneys to whom conflict cases will be appointed.

Chelan County is using its 1542 funds to help establish the new public defense agency.

2005 Statistics

Total adult criminal cases per 1000 population	59.5
Amount spent for public defense	\$1,033,258
Amount spent per capita	\$14.93

Adult felony

New adult superior court cases filed	680
New adult superior court cases per 1000 population	9.8
Number of new cases assigned to counsel	438
Percent of new cases assigned to counsel	64.4%

Adult misdemeanor

New county misdemeanor cases filed	1959
Total new district and municipal court misdemeanor cases filed in county	3445
Total new misdemeanor cases per 1000 population	49.8
Number of new cases assigned to counsel by county	613

Juvenile offender

New juvenile offender cases filed	446
New juvenile offender cases per 1000 population	6.5
Number of new cases assigned to counsel	430
Percent of new cases assigned to counsel	96.4%

CLALLAM COUNTY

Population:	66,800
Percent below poverty level in 2003:	11.9%
2006 1542 distribution:	\$31,478

Clallam County contracts with the Clallam County Public Defender, a non-profit corporation, for public defense representation. The Clallam County Public Defender provides direct supervision of attorneys, in-house investigation services, and resolution of client complaints. The Clallam County courts appoint supplemental private investigators on a case-by-case basis. Conflict counsel is appointed by the courts from a list of attorneys, six of whom are paid \$75 per hour while three are paid a flat fee of \$466 per month.

Clallam County is considering using its 1542 funds to upgrade the public defender's office computer systems, software and legal research, increasing staff attorney compensation, and providing attorney and investigator training.

2005 Statistics

Total adult criminal cases per 1000 population	48.3
Amount spent for public defense	\$832,457
Amount spent per capita	\$12.46

Adult felony

New adult superior court cases filed	650
New adult superior court cases per 1000 population	9.7
Number of new cases assigned to counsel	566 (plus 48 PVs)
Percent of new cases assigned to counsel	87%
New cases assigned per FTE	179 (PVs = 1/3 case) ¹

Adult misdemeanor

New county misdemeanor cases filed	1461
misdemeanor cases filed in county	2593
Total new misdemeanor cases per 1000 population	38.8
Number of new cases assigned to counsel by county	380 (plus 199 PVs)
New cases assigned per FTE	363.5 (PVs = 1/3 case) ¹

Juvenile offender

New juvenile offender cases filed	381
New juvenile offender cases per 1000 population	5.70
Number of new cases assigned to counsel	285 (plus 195 PVs)
Percent of new cases assigned to counsel	74.8%
New cases assigned per FTE	350 (PVs = 1/3 case) ¹

¹ The Clallam County Public Defender separately tracks new cases and probation violations (PVs) assigned. The FTE caseloads reported above were derived by counting new cases as one and probation violation cases as one-third and utilizing agency estimates for the FTEs assigned to handle each case type.

CLARK COUNTY

Population:	391,500
Percent below poverty level in 2003:	10.5%
2006 1542 distribution:	\$146,339

Clark County provides public defense representation through a contract system. In 2005, the county used approximately forty attorneys and law firms to handle adult felony cases, six attorneys for juvenile cases and one law firm for virtually all misdemeanor cases. The county used flat fee contracts based on the anticipated number of assignments with a provision for fee adjustment if more, or fewer, cases were actually charged during the year. Attorneys obtained investigative services through motion to the court.

The primary misdemeanor contract paid a flat fee of \$280,000 in 2005 for 3500 anticipated cases. Cases in excess of 3500 were paid at the rate of \$105 per case.

Juvenile offender contracts paid a flat fee of \$64,000 based on the anticipated caseload of 320 cases. Standard cases were paid at the rate of \$200 per case, while sex offender cases were paid \$335 per case.

The county used a case weighting “point” system to set payments in felony cases at the rate of \$700 per point. General felony cases that did not result in trials were assigned one point. Sex offender cases counted as two points. A probation violation case counted as a half point. Other fractional points were assigned in various circumstances. Contracts ranged from anticipated assignments of 14 to 230 points, averaging approximately 67 points. An additional \$425 trial per diem was paid. Homicide cases were paid at higher rates depending on the level of homicide charged.

Clark County is using its 1542 funds to partially fund a newly created Indigent Defense Coordinator position. The new coordinator is responsible for monitoring contract compliance and improving the overall quality of public defense services in the county.

2005 Statistics

Total adult criminal cases per 1000 population	39.1
Amount spent for public defense	\$4,269,011
Amount spent per capita	\$10.90

Adult felony

New adult superior court cases filed	2872
New adult superior court cases per 1000 population	7.3
Number of felony “points” assigned to counsel	3461
Percent of new cases assigned to counsel	N/A ¹

¹ The County tracked and reported felony “points” without separately tracking new case and probation violation assignments so the percentage of new cases assigned to counsel could not be determined.

Adult misdemeanor

New county misdemeanor cases filed	6167
Total new district and municipal court misdemeanor cases in county	12,486
Total new misdemeanor cases per 1000 population	31.9
Number of new cases assigned to counsel by county	3500

Juvenile offender

New juvenile offender cases filed	1346
New juvenile offender cases per 1000 population	3.4
Number of cases assigned to counsel	2,470 ²
Percent of new cases assigned to counsel	N/A ³

² Most juvenile offender probation violation cases were counted as a full case.

³ The County did not separately track new case and probation violation assignments so the percent of new cases assigned to counsel could not be determined.

COLUMBIA COUNTY

2005 Population:	4100
Percent below poverty level in 2003:	11.9%
2006 1542 distribution:	\$5,838

Columbia County delivers public defense services through a contract system. During 2005, the county contracted with two different attorneys for public defense representation; each contract specified that the attorney is responsible for 50 percent of all case types assigned, paid on a monthly basis. The Superior Court contract totaled \$21,000 per attorney; the District Court compensation was \$17,280 annually. The court appoints conflict counsel at a rate of \$75 per hour.

Columbia County officials indicate the 1542 funding will be used to increase compensation for contract and list appointed counsel.

2005 Statistics

Total adult criminal cases per 1000 population	70.7
Amount spent on public defense	\$89,455
Amount spent per capita	\$21.82

Adult felony

New adult superior court cases filed	44
New adult superior court cases per 1000 population	10.7
Number of new cases assigned to counsel	37
Percent of new cases assigned to counsel	84.1%

Adult misdemeanor

New county misdemeanor cases filed	152
Total new district and municipal court misdemeanor cases filed in county	246
Total new misdemeanor cases per 1000 population	60
Number of new cases assigned to counsel by county	N/A ¹

Juvenile offender

New juvenile offender cases filed	26
New juvenile offender cases per 1000 population	6.3
Number of new cases assigned to counsel	23
Percent of new cases assigned to counsel	88%

¹ The total number of new adult misdemeanor cases assigned to counsel could not be determined.

COWLITZ COUNTY

2005 Population:	95,900
Percent below poverty level in 2003:	13.7%
2006 1542 distribution:	\$67,342

Cowlitz County delivers indigent defense representation through a contract system with different case-counting methods for different case types. The twelve 2005 adult felony contracts provide that caseload equivalents are expressed as “points,” with specific case types assigned differing point values.

In District Court, the county contracted with one firm that handled 100 percent of the caseload other than conflicts. Juvenile offender and other juvenile case types were handled by two different attorneys, each contracting for 50 percent of the caseload. The court uses a list of attorneys for appointment in conflict cases; compensation was set at \$50 per hour for all case types.

Cowlitz County officials indicate they plan to use the county’s 1542 funding to help initiate a county office to assist in administering and monitoring the delivery of public defense representation.

2005 Statistics

Total adult criminal cases per 1000 population	73.9
Amount spent for public defense	\$1,587,739
Amount spent per capita	\$16.56

Adult felony

New adult superior court cases filed	1693
New adult superior court cases per 1000 population	17.7
Number of new cases assigned to counsel	1578 ¹
Percent of new cases assigned to counsel	N/A ¹

Adult misdemeanor

New county misdemeanor cases filed	2329
Total new district and municipal court misdemeanor cases filed in county	5414
Total new misdemeanor cases per 1000 population	56.5
Number of new cases assigned to counsel by county	1144 ¹

Juvenile offender

New juvenile offender cases filed	449
New juvenile offender cases per 1000 population	4.7
Number of new cases assigned to counsel	641 ¹
Percent of new cases assigned to counsel	N/A ¹

¹ The case totals reported include probation violations; accordingly, the percentage of new cases assigned to public defense counsel could not be determined.

DOUGLAS COUNTY

2005 Population:	34,700
Percent below poverty level in 2003:	11.9%
2006 1542 distribution:	(\$17,467)

Douglas County did not participate in the HB 1542 funding application process. Accordingly, financial data and information relating to the amount spent for public defense services or the number and percentage of new cases assigned to counsel was not available. The number of new cases filed is derived from the Office of the Administrator of the Courts case filings report.

2005 Statistics

Total adult criminal cases per 1000 population	44.1
Amount spent for public defense	
Amount spent per capita	

Adult felony

New adult superior court cases filed	259
New adult superior court cases per 1000 population	7.5
Number of new cases assigned to counsel	
Percent of new cases assigned to counsel	

Adult misdemeanor

New county misdemeanor cases filed	655
Total new district and municipal court misdemeanor cases filed in county	1277
Total new misdemeanor cases per 1000 population	36.8
Number of new cases assigned to counsel by county	

Juvenile offender

New juvenile offender cases filed	188
New juvenile offender cases per 1000 population	5.4
Number of new cases assigned to counsel	
Percent of new cases assigned to counsel	

FERRY COUNTY

Population:	7,400
Percent below poverty level in 2003:	16.6%
2006 1542 distribution:	\$7,198

Ferry County administers public defense representation through a contract system. One attorney provides representation to all indigent adults and juveniles except conflicts. Three additional attorneys are available for public defense court appointment at a rate of \$70 per hour for Superior Court cases and \$60 per hour for District Court cases.

The Ferry, Stevens and Pend Oreille Tri-County Criminal Justice Committee plans to make recommendations on the use of the county's 1542 funds to the Ferry County Commissioners.

2005 Statistics

Total adult criminal cases per 1000 population	27.3
Amount spent for public defense	\$100,301
Amount spent per capita	\$13.55

Adult felony

New adult superior court cases filed	39
New adult superior court cases per 1000 population	5.3
Number of new cases assigned to counsel	32
Percent of new cases assigned to counsel	82.1%

Adult misdemeanor

New county misdemeanor cases filed	135
Total new district and municipal court misdemeanor cases filed in county	163
Total new misdemeanor cases per 1000 population	22.0
Number of new cases assigned to counsel by county	149

Juvenile offender

New juvenile offender cases filed	21
New juvenile offender cases per 1000 population	2.8
Number of new cases assigned to counsel	13
Percent of new cases assigned to counsel	61.9%

FRANKLIN COUNTY

2005 Population:	60,500
Percent below poverty level in 2003:	15.3%
2006 1542 distribution:	\$27,441

Franklin County administers public defense representation through a contract system. Four different attorneys agreed to accept up to 140 felony cases per year for a flat monthly fee of \$5807. Conflicts and other case types were handled by list appointment. Each contract provided a \$60 hourly rate for homicides and other specific complex case types.

District Court cases were handled by two separate attorneys, each of whom were responsible for 50 percent of the total caseload for \$2703 per month, with an \$85 per case fee if the caseload exceeded 200 cases.

Juvenile offender cases are handled through a bi-county (Benton and Franklin counties) panel appointment system. The two counties contracted with eight different attorneys to provide indigent defense services to all youth charged with a criminal offense in 2005. These contracts provided for a specific number of juvenile offender cases per annum; assigned cases were counted through a case-weighting system assigning differing values to certain case types. Five other attorneys each contracted for specific case types including mental health involuntary commitment; civil contempt; adult drug court and Becca cases. Franklin County paid 26.9 percent of the bi-county panel costs in 2005.

Franklin County indicates it will spend the county's 1542 funding to support a compliance monitor for contract defense counsel, as well as an internet computer research program for them.

2005 Statistics

Total adult criminal cases per 1000 population	62.0
Amount spent for public defense	\$511,403
Amount spent per capita	\$8.45

Adult felony

New adult superior court cases filed	548
New adult superior court cases per 1000 population	9.1
Number of new cases assigned to counsel	361
Percent of new cases assigned to counsel	65.8%

Adult misdemeanor

New county misdemeanor cases filed	1153
Total new district and municipal court misdemeanor cases filed in county	3210
Total new misdemeanor cases per 1000 population	53.1
Number of new cases assigned to counsel by county	454

Juvenile offender

New juvenile offender cases filed	397
New juvenile offender cases per 1000 population	6.6
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

¹ Under the Benton and Franklin Counties bi-county panel system, caseload reporting is not differentiated between counties. Accordingly, the number and percentage of new cases assigned to counsel and assigned per FTE could not be determined.

GARFIELD COUNTY

2005 Population:	2,400
Percent below poverty level in 2003:	11.3%
2006 1542 distribution:	\$4,741

Garfield County provides public defense representation through a contract with one individual attorney who is responsible for 100 percent of the cases in all of the county courts except conflict cases. In 2005, the total contract amount was \$21,000, \$17,640 of which was for Superior Court cases. The court uses a list of attorneys for appointment in conflict cases at an hourly rate of \$75.

Garfield County officials indicate the County's HB 1542 funding will be used to increase compensation for court-appointed counsel, investigator costs, defense experts, and training and education for counsel.

2005 Statistics

Total adult criminal cases per 1000 population	91.3
Amount spent for public defense	\$30,209
Amount spent per capita	\$12.58

Adult felony

New adult superior court cases filed	24
New adult superior court cases per 1000 population	10
Number of new cases assigned to counsel	18
Percent of new cases assigned to counsel	75%

Adult misdemeanor

New county misdemeanor cases filed	195
Total new district and municipal court misdemeanor cases filed in county	195
Total new misdemeanor cases per 1000 population	81.3
Number of new cases assigned to counsel by county	33

Juvenile offender

New juvenile offender cases filed	9
New juvenile offender cases per 1000 population	3.8
Number of new cases assigned to counsel	8
Percent of new cases assigned to counsel	89%

GRANT COUNTY

Population:	79,100
Percent below poverty level in 2003:	15.8%
2006 1542 distribution:	\$41,124

In 2005, Grant County provided public defense representation through an individual contract system with a number of local attorneys and firms. The attorneys contracted to provide representation in up to 150 cases per annum for a base/guaranteed fee of \$88,000. In addition each contract provided for extraordinary case compensation of \$75 per hour based on a case weighting formula. One law firm contracted to provide representation in all adult misdemeanors for a contract amount of \$300,000 per year. The juvenile contract included offender, Becca and dependency cases and set no caseload limits.

As a result of the settlement of *Best v. Grant County*¹ in November 2005, Grant County has developed a consortium of individually contracted attorneys to provide public defense representation. A supervising public defender oversees the consortium. The settlement requires the County to include and follow the WSBA approved Standards for Public Defense Services in all felony contracts.² The County has also adopted those standards in all juvenile contracts.

Grant County Commissioners in consultation with the supervising public defender will determine uses for the county's 1542 allocation.

2005 Statistics

Total adult criminal cases per 1000 population	76.4
Amount spent for public defense	\$1,536,952
Amount spent per capita	\$19.43

Adult felony

New adult superior court cases filed	927
New adult superior court cases per 1000 population	11.7
Number of new cases assigned to counsel	896
Percent of new cases assigned to counsel	96.8%
New cases assigned per contract	150 ³

¹ <http://www.defensenet.org/GrantCountySettlement.pdf>

² <http://www.defensenet.org/resources/wdastand.htm>

³ In the Grant County system there were nine contract defenders in adult felonies with contracts ranging from 15 to 150 cases prior to the settlement.

Adult misdemeanor

New county misdemeanor cases filed	5117
Total new district and municipal court misdemeanor cases filed in county	5117
Total new misdemeanor cases per 1000 population	64.7
Number of new cases assigned to counsel by county	3077

Juvenile Offender

New juvenile offender cases filed	586
New juvenile offender cases per 1000 population	7.4
Number of new cases assigned to counsel	404
Percent of new cases assigned to counsel	69%

GRAYS HARBOR COUNTY

2005 Population:	69,800
Percent below poverty level in 2003:	15.0%
2006 1542 distribution:	\$34,945

Grays Harbor County provides public defense representation through contracts with several different attorneys, each handling a specific case type. Twenty attorneys accepted adult felony cases in 2005, each at a base fee of \$500 per case for class B or lesser felonies and \$900 per case for class A felonies as well as a trial per diem.

Each of four District Court attorneys had a presumptive 300-case limit with an absolute cap of 375 cases. The contracts provided \$2689 per month up to 300 cases with a \$97.80 excess case rate up to the 375-case cap. One attorney handled all juvenile offender cases for a total of \$4500 monthly.

Other case types including conflicts were handled through list appointment by the court or specific contract coverage.

Grays Harbor County will use the county's 1542 funds to add a juvenile offender contract attorney and increase compensation for serious felony appointments.

2005 Statistics

Total adult criminal cases per 1000 population	92.3
Amount spent for public defense	\$934,169
Amount spent per capita	\$13.38

Adult felony

New adult superior court cases filed	768
New adult superior court cases per 1000 population	11.0
Number of new cases assigned to counsel	697
Percent of new cases assigned to counsel	90.8%

Adult misdemeanor

New county misdemeanor cases filed	2336
Total new district and municipal court misdemeanor cases filed in county	5677
Total new misdemeanor cases per 1000 population	81.3
Number of new cases assigned to counsel by county	1321

Juvenile offender

New juvenile offender cases filed	290
New juvenile offender cases per 1000 population	4.2
Number of new cases assigned to counsel	284
Percent of new cases assigned to counsel	97.9%

ISLAND COUNTY

2005 Population:	76,000
Percent below poverty level in 2003:	8.3%
2006 1542 distribution:	\$25,616

Island County delivers public defense representation through a mixed system, contracting with a single law firm to provide virtually all criminal defense services and using list appointments for conflict and other specific case types. The primary contract totaled \$373,026 in base fees in 2005. Conflict and other appointments are compensated according to a published county public defense fee schedule.

Island County officials indicate the county's 1542 funding will be used to provide counsel, through the primary contract defender, at defendants' initial appearance in Superior and District Court, including juvenile offender matters.

2005 Statistics

Total adult criminal cases per 1000 population	28.1
Amount spent for public defense	\$570,152
Amount spent per capita	\$7.50

Adult felony

New adult superior court cases filed	264
New adult superior court cases per 1000 population	3.5
Number of new cases assigned to counsel	273 ¹
Percent of new cases assigned to counsel	N/A ¹

Adult misdemeanor

New county misdemeanor cases filed	1323
Total new district and municipal court misdemeanor cases filed in county	1885
Total new misdemeanor cases per 1000 population	24.8
Number of new cases assigned to counsel by county	569

Juvenile offender

Juvenile offender cases filed	251
Juvenile offender cases per 1000 population	3.3
Number of new cases assigned to counsel	285 ¹
Percent of new cases assigned to counsel	N/A ¹

¹ The case totals reported include probation violations; accordingly, the percentage of new cases assigned to counsel could not be determined.

JEFFERSON COUNTY

Population:	27,600
Percent below poverty level in 2003:	11.0%
2006 1542 Distribution:	\$13,146

Jefferson County contracts with Jefferson Associated Counsel, a non-profit corporation, for all public defense representation. Jefferson Associated Counsel employs one full-time attorney and two part time attorneys, comprising 2.25 FTE's. The office director provides direct supervision for the attorneys and is responsible for handling client complaints. Some investigative services are provided by support staff; the balance is provided by private investigators appointed by the court on a case by case basis. The court appoints conflict counsel from a list of private attorneys who are paid \$55 per hour.

Jefferson County intends to use its 1542 funds to increase the availability of investigative services to the public defender office.

2005 Statistics

Total adult criminal cases per 1000 population	54.2
Amount spent for public defense	\$314,415
Amount spent per capita	\$11.39

Adult felony

New adult superior court cases filed	217
New adult superior court cases per 1000 population	7.9
Number of new cases assigned to counsel	188 (plus 7 PVs)
Percent of new cases assigned to counsel	86.6%
New cases assigned per FTE	202.6 (PVs = 1/3 case) ¹

Adult misdemeanor

New county misdemeanor cases filed	992
Total new district and municipal court misdemeanor cases filed in county	1282
Total new misdemeanor cases per 1000 population	46.5
Number of new cases assigned to counsel by county	545 (plus 214 PVs)
New cases assigned per FTE	580.33 (PVs = 1/3 case) ¹

Juvenile offender

New juvenile offender cases filed	85
New juvenile offender cases per 1000 population	3.1
Number of new cases assigned to counsel	73 (plus 58 PVs)
Percent of new cases assigned to counsel:	85.9%
New cases assigned per FTE	325.3 (PVs = 1/3 case) ¹

¹ Jefferson Associated Counsel tracks both new cases and probation violations (PVs) assigned to the office. The FTE caseloads were derived by counting new cases as one and probation violations (PVs) as one-third of a case and utilizing estimates provided by the agency for FTEs assigned to handle each case type.

KING COUNTY

Population:	1,808,300
Percent below poverty level in 2003:	9.4%
2006 1542 distribution:	\$618,603

King County administers public defense representation through the King County Office of Public Defense, a county agency which contracts for direct client services with four non-profit public defense agencies: Associated Counsel for the Accused (ACA), Society of Counsel Representing Accused Persons (SCRAP), The Defender Association (TDA) and Northwest Defender (NDA).

The King County Office of Public Defense provides funding for these agencies that includes salaries for attorneys, supervisors and support staff; administrative overhead including staff and operational costs; rent allocations; and calendar costs per specific calendar assignments. The agencies are budgeted for attorney salary, exclusive of benefits, at parity with the King County Prosecutor’s Office employees.¹ Expert and other case related expenses not included in the contracts are paid by the county upon written request to the Office of Public Defense.

County payments to the agencies are determined according to a detailed case weighting or “credit” system based on case complexity. This system assures accurate measurement of the work involved in representing indigent defendants. Cases which present a conflict of interest for all four agencies are assigned on a case by case basis to county approved private attorneys. In 2005 conflict cases were compensated at the rate of \$75 per hour for aggravated homicides, \$50 per hour for felony and juvenile offender cases, and \$45 per hour for misdemeanors.

2005 Statistics

Total adult criminal cases per 1000 population	34.7
Amount spent for public defense	\$33,286,523
Amount spent per capita	\$18.41

Adult felony

New adult superior court cases filed	10,176
New adult superior court cases per 1000 population	5.6
Number of new cases assigned to counsel	8913
Percent of new cases assigned to counsel	87.6%
New cases assigned per FTE	150 case credits

¹ King County Council Motion 12160 (2005)

Adult Misdemeanor

New county misdemeanor cases filed	12,906
Total new district and municipal court misdemeanor cases filed in county	52,890
Total new misdemeanor cases per 1000 population	29.2
Number of new cases assigned to counsel by county	5681
New cases assigned per FTC	450 case credits

Juvenile offender

New juvenile offender cases filed	4082
New juvenile offender cases per 1000 population	2.3
Number of new cases assigned to counsel	4077
Percent of new cases assigned to counsel	99.8%
New cases assigned per FTE	330 case credits

KITSAP COUNTY

2005 Population:	240,400
Percent below poverty level in 2003:	9.2%
2006 1542 distribution:	\$102,729

Kitsap County administers public defense representation by contracting with different firms in each of several practice areas. Each contract has a specific caseload limit and is paid according to a published public defense fee schedule. The schedule requires payment of \$1010 for adult felony cases.

A similar system is used in District Court and for juvenile offender caseload. All conflict cases are list appointed and compensated according to the published fee schedule.

Kitsap County's Public Defense Advisory Committee will meet to determine the most effective use of the county's 1542 allocation.

2005 Statistics

Total adult criminal cases per 1000 population	39.1
Amount spent for public defense	\$3,683,384
Amount spent per capita	\$15.33

Adult felony

New adult superior court cases filed	2103
New adult superior court cases per 1000 population	8.7
Number of new cases assigned to counsel	1894
Percent of new cases assigned to counsel	90%

Adult misdemeanor

New county misdemeanor cases filed	4450
Total new district and municipal court misdemeanor cases filed in county	7305
Total new misdemeanor cases per 1000 population	30.4
Number of new cases assigned to counsel by county	3877

Juvenile offender

Juvenile offender cases filed	1024
Juvenile offender cases per 1000 population	4.3
Number of new cases assigned to counsel	752
Percent of new cases assigned to counsel	73.4%

KITITAS COUNTY

2005 Population:	36,600
Percent below poverty level:	13.4%
2006 1542 distribution:	\$20,336

Kittitas County delivers public defense representation solely through list appointment. Contracts are utilized only in extraordinary circumstances such as specific serious felonies. Appointed attorneys are paid at a published rate per case unless otherwise authorized. The 2005 rate was \$600 per case plus trial per diem for adult felony cases and \$250 per case for juvenile offenders.

The same system is utilized in District Court as well as for other case types such as civil contempt and felony and misdemeanor probation violations.

Kittitas County's Trial Court Coordinating Council will decide how to use the county's 1542 allocation.

2005 Statistics

Total adult criminal cases per 1000 population	87.7
Amount spent for public defense	\$360,915
Amount spent per capita	\$9.86

Adult felony

New adult superior court cases filed	386
New adult superior court cases per 1000 population	10.5
Number of new cases assigned to counsel	230
Percent of new cases assigned to counsel	59.6%

Adult misdemeanor

New county misdemeanor cases filed	2578
Total new district and municipal court misdemeanor cases filed in county:	2830
Total new misdemeanor cases per 1000 population	77.3
Number of new cases assigned to counsel by county	745

Juvenile offender

New juvenile offender cases filed	121
New juvenile offender cases per 1000 population	3.3
Number of new cases assigned to counsel	89
Percent of new cases assigned to counsel	73.5%

KLICKITAT COUNTY

2005 Population:	19,500
Percent below poverty level in 2003:	14.5%
2006 1542 distribution:	\$13,264

Klickitat County administers public defense representation using one contract signed by three attorneys for all Superior Court matters. During 2005, the contract specified that the three attorneys would provide 100 percent of indigent defense services in adult felony, juvenile offender, and other specific juvenile case types. The contract provided compensation of \$4,027 monthly each for the three attorneys.

The county has two separate District Courts; defense services in each court were provided for by separate contract requiring those attorneys to accept 100 percent of the cases assigned. Conflict cases in all courts are handled through list appointment by the court at an hourly rate of \$65 for all case types.

Klickitat County officials will determine an appropriate use for the county's 1542 funds following consultation among the court, public defense counsel and the county commissioners.

2005 Statistics

Total adult criminal cases per 1000 population	62.1
Amount spent for public defense	\$237,120
Amount spent per capita	\$12.16

Adult felony

New adult superior court cases filed	228
New adult superior court cases per 1000 population	11.7
Number of new cases assigned to counsel	216
Percent of new cases assigned to counsel	94.7%

Adult misdemeanor

New county misdemeanor cases filed	700
Total new district and municipal court misdemeanor cases filed in county	988
Total new misdemeanor cases per 1000 population	50.6
Number of new cases assigned to counsel by county	335

Juvenile offender

New juvenile offender cases filed	141
New juvenile offender cases per 1000 population	7.2
Number of new cases assigned to counsel	141
Percent of new cases assigned to counsel	100%

LEWIS COUNTY

Population:	71,600
Percent below poverty level in 2003:	13.5%
2006 1542 distribution:	\$43,729

Lewis County administers public defense representation through a mixed contract and list appointment system. The county contracts with 10 attorneys for adult felony cases and seven attorneys in juvenile offender cases. The District Court maintains a list of six private attorneys for appointment on a case by case basis. Some attorneys accept more than one case type.

The county uses a case weighting system to determine compensation for particular case types. Class A adult felonies are paid at the rate of \$65 per hour; other adult felony cases are paid at \$400 per unit. Handling a class B or C felony through sentencing in a non-trial case constitutes one unit. Each trial day is counted as another unit. Pre- and post-trial motions, drug court cases and probation violations constitute a half unit.

Juvenile offender cases are paid at \$175 per unit, which consists of representing an offender through disposition including up to one day of fact finding. A second day of a fact finding hearing adds another unit. Pre- and post-trial motions, review hearings and probation matters count as a half unit.

District Court cases are paid at \$150 per unit with additional units for trial motions and trial cases.

Investigative services are available through motions to the court on a case by case basis.

Lewis County intends to use the funds to provide counsel at defendants' initial appearance in Superior Court, to increase compensation for defenders in District Court, and to add counsel and investigative services for juvenile offenders.

2005 Statistics

Total adult criminal cases per 1000 population	67.0
Amount spent for public defense	\$1,083,090
Amount spent per capita	\$15.13

Adult Felony

New adult superior court cases filed:	934
New adult superior court cases per 1000 population	13.0
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

¹ The County reported felony "units" as opposed to cases assigned to counsel so the number and percent of new cases assigned to counsel could not be determined.

Adult Misdemeanor

New county misdemeanor cases filed	2241
Total new district and municipal court misdemeanor cases filed in county	3866
Total new misdemeanor cases per 1000 population	54.0
Number of new cases assigned to counsel by county	1239 (plus 452 PVs)

Juvenile Offender

New juvenile offender cases filed	399
New juvenile offender cases per 1000 population	5.6
Number of new cases assigned to counsel	310
Percent of new cases assigned to counsel	77.7%

LINCOLN COUNTY

2005 Population:	10,100
Percent below poverty level in 2003:	13.5%
2006 1542 distribution:	\$6,989

Lincoln County administers public defense representation using a mixed system. Public defense representation for adult misdemeanors is handled through a contract with one attorney. In 2005, that attorney accepted 100 percent of the District Court cases assigned for a fixed contract amount of \$30,888. Conflicts are handled through list appointment.

Adult felony, juvenile offender, and all other Superior Court case types in which counsel is provided are list appointed, as are conflict cases. In 2005, counsel appointed to provide indigent defense services received \$40 per hour for each case.

Lincoln County indicates that its board of county commissioners will determine the manner in which the county's 1542 funding will be spent.

2005 Statistics

Total adult criminal cases per 1000 population	65.4
Amount spent for public defense	\$87,642
Amount spent per capita	\$8.68

Adult felony

New adult superior court cases filed	62
New adult superior court cases per 1000 population	6.1
Number of new cases assigned to counsel	46
Percent of new cases assigned to counsel	74.2%

Adult misdemeanor

New county misdemeanor cases filed	586
Total new district and municipal court misdemeanor cases filed in county	599
Total new misdemeanor cases per 1000 population	59.3
Number of new cases assigned to counsel by county	198

Juvenile offender

New juvenile offender cases filed	44
New juvenile offender cases per 1000 population	4.4
Number of new cases assigned to counsel	11
Percent of new cases assigned to counsel	25%

MASON COUNTY

2005 Population:	51,900
Percent below poverty level in 2003:	11.9%
2006 1542 distribution:	\$27,716

Mason County delivers public defense representation through a contract system. Each contract attorney is responsible for a specific court or case type under a stated caseload limit. During 2005, there were two contracts for 150 cases each and a third for 75 cases for adult felony cases for a contract capacity of 375 cases.

Two juvenile offender contracts provided that each attorney may accept no more than 250 cases per year for a contract capacity of 500 cases. One attorney was contracted to provide representation in all District Court cases in the county. Conflict counsel is list appointed by the court.

Mason County officials have indicated they will determine the appropriate use of the county's 1542 allocation after review of the caseload and services now being provided.

2005 Statistics

Total adult criminal cases per 1000 population	61.0
Amount spent for public defense	\$668,720
Amount spent per capita	\$12.88

Adult felony

New adult superior court cases filed	584
New adult superior court cases per 1000 population	11.3
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

Adult misdemeanor

New county misdemeanor cases file	1687
Total new district and municipal court misdemeanor cases filed in county	2593
Total new misdemeanor cases per 1000 population	47.9
Number of new cases assigned to counsel by county	809

Juvenile offender

New juvenile offender cases filed	249
New juvenile offender cases per 1000 population	4.8
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

¹ The caseload number reported was the total caseload capacity under the county's public defense contracts rather than the actual caseload total; accordingly, the number and percent of new cases assigned could not be determined.

OKANOGAN COUNTY

2005 Population:	39,600
Percent below poverty level in 2003:	18.7%
2006 1542 distribution:	\$21,026

Okanogan County delivers public defense representation through a contract system with four primary attorneys. During 2005, the county executed one contract with those attorneys for coverage of all indigent defense cases in the county. The total contract was for a fixed fee of \$700,000.

Okanogan County officials indicate the uses for the 1542 funding will be determined after consultation with the current public defense contract holders.

2005 Statistics

Total adult criminal cases per 1000 population	63.4
Amount spent for public defense	\$778,373
Amount spent per capita	\$19.65

Adult felony

New adult superior court cases filed	447
New adult superior court cases per 1000 population	11.3
Number of new cases assigned to counsel	499 ¹
Percent of new cases assigned to counsel	N/A ¹

Adult misdemeanor

New county misdemeanor cases filed	2061
Total new district or municipal court misdemeanor cases filed in county	2065
Total new misdemeanor cases per 1000 population	52.1
Number of new cases assigned to counsel by county	1691

Juvenile offender

New juvenile offender cases filed	380
New juvenile offender cases per 1000 population	9.6
Number of new cases assigned to counsel	384 ¹
Percent of new cases assigned to counsel	N/A ¹

¹ The total number of cases reported as assigned to public defense counsel in Okanogan County Superior Court for both adult felony and juvenile offender matters includes probation violations; accordingly, the percentage of cases assigned to public defense counsel could not be determined.

PACIFIC COUNTY

2005 Population:	21,300
Percent below poverty level in 2003:	not available
2006 1542 distribution:	\$14,508

Pacific County provides indigent defense representation through a contract system. Attorneys contract for a percentage of cases in a specific court. This system is used for each court level. Pacific County contracted with eight different attorneys in 2005. Conflict cases were list appointed at a rate of \$80 per hour.

Pacific County officials indicate they will confer with the court to determine how the county's 1542 funds will be expended.

2005 Statistics

Total adult criminal cases per 1000 population	98.4
Amount spent for public defense	\$234,780
Amount spent per capita	11.02

Adult felony

New adult superior court cases filed	326
New adult superior court cases per 1000 population	15.3
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

Adult misdemeanor

New county misdemeanor cases filed	1168
Total new district and municipal court misdemeanor cases filed in county	1771
Total new misdemeanor cases per 1000 population	83.1
Number of new cases assigned to counsel by county	N/A ¹

Juvenile offender

New juvenile offender cases filed	114
New juvenile offender cases per 1000 population	5.4
Number of new cases assigned to counsel	78
Percent of new cases assigned to counsel	68.4%

¹ The number and percent of new cases that were assigned to counsel could not be determined.

PEND OREILLE COUNTY

Population:	12,200
Percent below poverty level in 2003:	15.0%
2006 1542 distribution:	\$8,394

Pend Oreille County provides public defense representation through a contract with three associated attorneys handling 100 percent of the caseload except conflicts. The contract totaled \$103,000 in 2005. Three additional conflict attorneys were available for list appointment at a rate of \$70 per hour.

The Pend Oreille, Ferry, and Stevens Tri-County Criminal Justice Committee will make recommendations on the use of the county's 1542 funds to the Pend Oreille County Commissioners.

2005 Statistics

Total adult criminal cases per 1000 population	65.7
Amount spent for public defense	\$193,893
Amount spent per capita	\$15.89

Adult felonies

New adult superior court cases filed	87
New adult superior court cases per 1000 population	7.1
Number of new cases assigned to counsel	70
Percent of new cases assigned to counsel	80%

Adult misdemeanors

New county misdemeanor cases filed	559
Total new district and municipal court misdemeanor cases filed in county	715
Total new misdemeanor cases per 1000 population	58.6
Number of new cases assigned to counsel by county	253

Juvenile offender

New juvenile offender cases filed	45
New juvenile offender cases per 1000 population	3.7
Number of new cases assigned to counsel	29
Percent of new cases assigned to counsel	64.4%

PIERCE COUNTY

Population:	755,900
Percent below poverty level in 2003:	10.7%
2006 1542 distribution:	\$306,757

Pierce County provides public defense representation through a county agency, the Department of Assigned Counsel (DAC). DAC employees receive salary and benefits in parity with the Pierce County Prosecutor's Office employees. DAC maintains felony, misdemeanor, and juvenile divisions and others related to civil practice areas. Each division has a senior supervising attorney. These supervisors, along with DAC's director and chief deputy provide supervision and oversight of staff attorneys and are responsible for resolving client complaints. The agency provides investigative services through a panel of pre-approved investigators.

DAC also maintains a panel of more than 100 attorneys who handle conflict cases. Panel rates are \$35 hourly for District Court; \$40 hourly for juvenile offender class B and C felonies; \$46 per hour for juvenile offender class A felonies and adult Class B and C felonies; \$57 per hour for adult class A felonies; and \$70 per hour for Class A+ (aggravated murder) felonies. The payment structure provides maximums for trial and non-trial cases and a method for attorneys to petition for added case compensation.

Pierce County intends to use its 1542 funds to employ additional staff attorneys to reduce caseloads.

2005 Statistics

Total adult criminal cases per 1000 population	42.8
Amount spent for public defense	\$12,012,985
Amount spent per capita	\$15.89

Adult felony

New adult superior court cases filed	6438
New adult superior court cases per 1000 population	8.5
Number of new cases assigned to counsel	5684
Percent of new cases assigned to counsel	88.3%
New cases assigned per FTE	146.2 ¹

Adult misdemeanor

New county misdemeanor cases filed	9290
Total new district and municipal court misdemeanor cases filed in county	25,989
Total new misdemeanor cases per 1000 population	34.4
Number of new cases assigned to counsel by county	3673
New cases assigned per FTE	332.2 ¹

¹ FTE caseload figures reported above reflect new cases only; they do not include probation violations.

Juvenile offender

New juvenile offender cases filed	2624
New juvenile offender cases per 1000 population	3.5
Number of new cases assigned to counsel	2258
Percent of new cases assigned to counsel	86.1%
New cases assigned per FTE	202.86 ¹

¹ FTE caseload figures reported above reflect new cases only; they do not include probation violations.

SAN JUAN COUNTY

2005 Population:	15,500
Percent below poverty level in 2003:	8.5%
2006 1542 distribution:	\$8,328

San Juan County delivers public defense representation through a contract with one attorney for representation in Superior and District Court and a contract with a different attorney for juvenile offenders. The contracts use a case weighting system and provide compensation at a specific point value per case; in 2005, an adult felony case had a contract value of \$739; a District Court case was valued at \$277; and a juvenile case had a value of \$440. The contracts provide for list appointment for conflict cases. Compensation for list appointed counsel is paid according to the published contract fee schedule.

San Juan County officials plan to use the county's 1542 funding to support a social worker and/or investigator who will work on litigation, mitigation, and diversion program issues.

2005 Statistics

Total adult criminal cases per 1000 population	32.3
Amount spent for public defense	\$230,948
Amount spent per capita	\$14.89

Adult felony

New adult superior court cases filed	58
New adult superior court cases per 1000 population	3.7
Number of new cases assigned to counsel	48
Percent of new cases assigned to counsel	82.8%

Adult misdemeanor

New county misdemeanor cases filed	443
Total new district and municipal court misdemeanor cases filed in county	443
Total new misdemeanor cases per 1000 population	28.6
Number of new cases assigned to counsel by county	192

Juvenile offender

New juvenile offender cases filed	39
New juvenile offender cases per 1000 population	2.5
Number of new cases assigned to counsel	27
Percent of new cases assigned to counsel	69.2%

SKAGIT COUNTY

Population:	110,900
Percent below poverty level in 2003:	11.5%
2006 1542 distribution:	\$50,645

Skagit County delivers public defense representation through the Skagit County Public Defender, a county agency. The agency’s director and chief deputy are responsible for supervision of staff attorneys and disposition of client complaints. Investigative services are provided in-house.

In 2005, Skagit County contracted with one law firm to handle most of the misdemeanor conflict cases. The contract paid a flat fee of \$4000 monthly for up to 40 cases.

Skagit County also contracted for other conflict cases at an hourly rate of \$75 per hour for class A felonies; \$65 per hour for class B and C felonies; and \$55 per hour for misdemeanor cases.

Skagit County intends to use its 1542 funding for additional staff to reduce caseloads and to increase the availability of professional support such as investigator and interpreter services.

2005 Statistics

Total adult criminal cases per 1000 population	65.8
Amount spent on public defense	\$1,418,684
Amount spent per capita	\$12.79

Adult felony

New adult superior court cases filed	941
New adult superior court cases per 1000 population	8.5
Number of new cases assigned to counsel	1003 ¹ (plus 151 PVs)
Percent of new cases assigned to counsel	N/A ²
New cases assigned per FTE	217.6 (PVs =1/3 case) ³

¹ This total exceeds new cases filed because the county tracks the number of “case referrals to counsel.” Upon a defendant’s failure to appear and the issuance of a bench warrant, a previously referred case may be tracked as being referred to counsel on more than one occasion.

² Since individual cases may be referred to counsel on multiple occasions, the percent of new cases assigned to counsel could not be determined.

³ The Skagit County Public Defender separately tracks both new and probation violation cases assigned to the agency. FTE caseloads were derived by counting new cases as one and probation violations as one-third and utilizing agency estimates for FTEs assigned to each case type.

Adult misdemeanor

New county misdemeanor cases filed	3195
Total new district and municipal court misdemeanor cases filed in county	6390
Total new misdemeanor cases per 1000 population	57.6
Number of new cases assigned to counsel by county	1397 (plus 584 PVs)
New cases assigned per FTE	398 (PVs = 1/3 case) ³

Juvenile offender

New juvenile offender cases filed	555
New juvenile offender cases per 1000 population	5.0
Number of new cases assigned to counsel	604 ¹ (plus 105 PVs)
Percent of new cases assigned to counsel	N/A ²
New cases assigned per FTE	288 (PVs = 1/3 case) ³

¹ This total exceeds new cases filed because the county tracks the number of “case referrals to counsel.” Upon a defendant’s failure to appear and the issuance of a bench warrant, a previously referred case may be tracked as being referred to counsel on more than one occasion.

² Since individual cases may be referred to counsel on multiple occasions, the percent of new cases assigned to counsel could not be determined.

³ The Skagit County Public Defender separately tracks both new and probation violation cases assigned to the agency. FTE caseloads were derived by counting new cases as one and probation violations as one-third and utilizing agency estimates for FTEs assigned to each case type.

SKAMANIA COUNTY

2005 Population:	10,300
Percent below poverty level:	10.9%
2006 1542 distribution:	\$8,837

Skamania County delivers Superior Court indigent defense representation through one contract with two different attorneys. In 2005, the two attorneys handled all assigned cases including juvenile offender and probation violations in Superior Court for a total contract amount of \$80,400.

A single contract also provides representation in district court for all assigned cases. When a conflict is identified, counsel is appointed from a list.

Skamania County officials indicate the county's 1542 funding will be used for investigation services and expert witnesses.

2005 Statistics

Total adult criminal cases per 1000 population	118.6
Amount spent for public defense	\$111,600
Amount spent per capita	\$10.83

Adult felony

New adult superior court cases filed	140
New adult superior court cases per 1000 population	13.6
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

Adult misdemeanor

New county misdemeanor cases filed	1003
Total new district and municipal court misdemeanor cases filed in county	1086
Total new misdemeanor cases per 1000 population	105.4
Number of new cases assigned to counsel by county	N/A ¹

Juvenile offender

New juvenile offender cases filed	36
New juvenile offender cases per 1000 population	3.5
Number of new cases assigned to counsel	N/A ¹
Percent of new cases assigned to counsel	N/A ¹

¹ The total number of cases reported by the county as being assigned to counsel includes probation violations (PVs) as well as new cases; accordingly, the number and percentage of new cases assigned to counsel could not be determined.

SNOHOMISH COUNTY

Population:	655,800
Percent below poverty level in 2003:	9.4%
2006 1542 distribution:	\$211,584

Snohomish County provides public defense representation in adult criminal cases in both Superior and District Court through a contract with the Snohomish County Public Defender Association (PDA), a non-profit corporation. PDA is managed by a director, an assistant director who supervises the felony unit, and a misdemeanor supervisor who are responsible for attorney supervision and resolution of client complaints. PDA provides investigative services in-house.

The County also maintains a list of private counsel for conflict cases; in 2005, they were compensated at rates of \$740 per case plus a \$325 trial per diem for class A felonies; \$629 per case plus a \$275 trial per diem for class B felonies; and \$530 per case plus a \$275 trial per diem for class C felonies. Homicide cases were paid at a higher rate; additional case compensation was available by petition.

In 2005, the county contracted with four private law firms for public defense representation in juvenile offender cases. Conflicts were list appointed. In September 2006, the County began contracting with PDA and one private law firm to handle juvenile offender cases.

Snohomish County has indicated possible uses for the 1542 funds are to bring its conflict attorney panel more in line with WSBA standards, to provide representation at out-of-custody District Court arraignment calendars or to increase the availability of investigator and social worker services.

2005 Statistics

Total adult criminal cases per 1000 population	42.5
Amount spent for public defense	\$7,855,183
Amount spent per capita	\$11.98

Adult felony

New adult superior court cases filed	3109
New adult superior court cases per 1000 population	4.7
Number of new cases assigned to counsel	2725
Percent of new cases assigned to counsel	87.7%
New case assigned per FTE	154 ¹

Adult misdemeanor

New county misdemeanor cases filed	9619
Total new district and municipal court misdemeanor cases filed in county	24,826
Total new misdemeanor cases per 1000 population	37.9
Number of new cases assigned to counsel by county	4518
New cases assigned per FTE	426.2 ¹

¹ The county's caseload figures reflect new cases only; they do not include probation violations, most of which are assigned to outside counsel rather than PDA attorneys.

Juvenile offender

New juvenile offender cases filed	1787
New juvenile offender cases per 1000 population	2.72
Number of new cases assigned to counsel	1324
Percent of new cases assigned to counsel	74.09%
Average caseload per contract	324.8 ¹

¹ The county's caseload figures reflect new cases only; they do not include probation violations, most of which are assigned to outside counsel rather than PDA attorneys.

SPOKANE COUNTY

Population:	436,300
Percent below poverty level in 2003:	12.8%
2006 1542 distribution:	\$194,985

Spokane County provides public defense representation through two separate county agencies, the Spokane County Public Defender and Counsel for Defense. Employees of both agencies are compensated in parity with the Spokane County Prosecutor's Office employees. Each agency is managed by a director who is responsible for attorney supervision and resolution of client complaints. Both provide investigative services in-house. The Spokane County Public Defender is the primary agency and handles Superior and District Court cases; Counsel for Defense handles the majority of Superior Court conflict cases. The primary agency also maintains a list of attorneys available to handle Superior Court cases that present a conflict of interest for both agencies. List attorneys receive \$1100 per case. Additionally, in certain serious case types presenting a conflict for both agencies, attorneys are list appointed and paid \$50-\$60 per hour plus investigative expenses.

Most District Court conflicts are handled through an inter-local agreement providing that the Public Defender and the City of Spokane Public Defender accept each other's conflicts. The Public Defender also contracts with an attorney who is paid \$50 hourly for cases presenting a conflict for both agencies.

Spokane County intends to use its 1542 funds to hire two additional District Court attorneys and to add support staff.

2005 Statistics

Total adult criminal cases per 1000 population	55.3
Amount spent for public defense	\$6,205,756
Amount spent per capita	\$14.22

Adult felony

New adult superior court cases filed	4626
New adult superior court cases per 1000 population	10.6
Number of new cases assigned to counsel	4005 (plus 419 PVs)
Percent of new cases assigned to counsel	86.6%
New cases assigned per FTE	172.0 (PVs = 1/3 case) ¹

¹ The Spokane County Public Defender separately tracks both new and probation violation cases (PVs) assigned to the agency and to Counsel for Defense. FTE caseloads were derived by counting new cases as one and probation violation cases as one-third of a case and utilizing the estimates provided by the Spokane County Public Defender for FTEs assigned to handle each case type.

Adult misdemeanor

New county misdemeanor cases filed	6280
Total new district and municipal court misdemeanor cases filed in county	19,509
Total new misdemeanor cases per 1000 population	44.7
Number of new cases assigned counsel by county	2837 (plus 1384 PVs)
New cases assigned per FTE	491.3 (PVs = 1/3 case) ¹

Juvenile offender

New juvenile offender cases filed	1675
New juvenile offender cases per 1000 population	3.8
Number of new cases assigned to counsel	1606 (plus 1187 PVs)
Percent of new cases assigned to counsel	95.9%
New cases assigned per FTE	307.8 (PVs = 1/3 case) ¹

¹ The Spokane County Public Defender separately tracks both new and probation violation cases (PVs) assigned to the agency and to Counsel for Defense. FTE caseloads were derived by counting new cases as one and probation violation cases as one-third of a case and utilizing the estimates provided by the Spokane County Public Defender for FTEs assigned to handle each case type.

STEVENS COUNTY

Population:	41,200
Percent below poverty level in 2003:	14.6%
2006 1542 distribution:	\$19,556

Stevens County provides public defense representation through a contract with an association of five attorneys to provide services for all indigent adults in District and Superior Courts. Eight additional attorneys are available for list appointment in juvenile offender matters. Conflicts in all cases are handled through list appointment.

The Stevens, Ferry and Pend Oreille Tri-County Criminal Justice Committee will make recommendations on the use of the county's 1542 funds to the Stevens County Commissioners.

2005 Statistics

Total adult criminal cases per 1000 population	37.1
Amount spent for public defense	\$386,361
Amount spent per capita	\$9.38

Adult felony

New adult superior court cases filed	276
New adult superior court cases per 1000 population	6.7
Number of new cases assigned to counsel	252
Percent of new cases assigned to counsel	91%

Adult misdemeanor

New county misdemeanor cases filed	889
Total new district and municipal court misdemeanor cases filed in county	1254
Total new misdemeanor cases per 1000 population	30.4
Number of new cases assigned to counsel by county	479

Juvenile offender

New juvenile offender cases filed	181
New juvenile offender cases per 1000 population	4.4
Number of new cases assigned to counsel	148
Percent of cases assigned to counsel	81.7%

THURSTON COUNTY

2005 Population:	224,100
Percent below poverty level in 2003:	9.0%
2006 1542 distribution:	\$108,703

Thurston County provides public defense representation through the Thurston County Office of Assigned Counsel (OAC), a county agency. OAC employees are compensated in parity with Thurston County Prosecutor's Office employees. In 2005, the agency director was responsible for supervision of staff attorneys and disposition of client complaints. OAC now has three senior defense attorneys to assist in those duties. OAC provides investigative services by contracting with private investigators on a case by case basis.

In 2005, OAC maintained a flat fee contract with one attorney for \$3000 per month to handle approximately half of the juvenile offender cases. Conflict and overflow cases were list appointed; the vast majority of those cases were paid at the rate of \$42 per hour.

The FTE misdemeanor caseload for OAC attorneys was 762.5 in 2005. The state Office of Public Defense initiated a pilot project in Thurston County District Court in January of 2006 which provided OAC with state funds and resources to address the issue. As a result, OAC misdemeanor attorneys now have FTE caseloads of approximately 400 cases. Additionally, as a result of the pilot project, OAC now provides attorneys to indigent defendants at first appearance/arraignment calendars for the first time.

Thurston County intends to use its 1542 funding to continue these improvements in District Court and to hire an additional investigator or social worker and additional staff attorneys to reduce caseloads in other practice areas.

2005 Statistics

Total adult criminal cases per 1000 population	51.2
Amount spent for public defense	\$2,068,965
Amount spent per capita	\$9.23

Adult felony

New adult superior court cases filed	2528
New adult superior court cases per 1000 population	11.3
Number of new cases assigned to counsel	2011
Percent of new cases assigned to counsel	79.5%
New cases assigned per FTE	175.5 ¹

Adult misdemeanor

New county misdemeanor cases filed	3,681
Total new district and municipal court misdemeanor cases filed in county	8,960
Total new misdemeanor cases per 1000 population	40.0
Number of new cases assigned counsel by county	2244
New cases assigned per FTE	762.5 ¹

¹ The caseload figures do not include any credit for probation violation cases.

Juvenile offender

New juvenile offender cases filed	1125
New juvenile offender cases per 1000 population	5.0
Number of new cases assigned to counsel	N/A ²
Percent of new cases assigned to counsel	N/A ²
New cases assigned per FTE	574 ¹

¹ The caseload figures do not include any credit for probation violation cases.

² Personnel changes in 2005 resulted in OAC counting many juvenile offender cases as having been assigned more than once so the number and percent of new cases assigned counsel could not be determined.

WAHKIAKUM COUNTY

2005 Population:	3,900
Percent below poverty level in 2003:	8.9%
2006 1542 distribution:	\$5,646

Wahkiakum County delivers public defense representation, including all felony, misdemeanor, juvenile offender representation and probation violations, solely through list appointment.

Attorneys on the court's list are not under contract although they have agreed to accept the appointments. Appointed attorneys are compensated at an hourly rate of \$80.

Wahkiakum County officials indicate they will confer with the court and others to determine an appropriate use for the county's 1542 funds.

2005 Statistics

Total adult criminal cases per 1000 population	59.7
Amount spent for public defense	\$65,224
Amount spent per capita	\$16.73

Adult felony

New adult superior court cases filed	40
New adult superior court cases per 1000 population	10.3
Number of new cases assigned to counsel	31
Percent of new cases assigned to counsel	77.5%

Adult misdemeanor

New county misdemeanor cases filed	193
Total new district and municipal court misdemeanor cases filed in county	193
Total new misdemeanor cases per 1000 population	49.4
Number of new cases assigned to counsel by county	66

Juvenile offender

New juvenile offender cases filed	19
New juvenile offender cases per 1000 population	4.9
Number of new cases assigned to counsel	16
Percent of new cases assigned to counsel	84.2%

WALLA WALLA COUNTY

2005 Population:	57,500
Percent below poverty level in 2003:	14.0%
2006 1542 distribution:	\$30,878

Walla Walla County delivers public defense representation through a contract system. In adult felony cases, representation is provided by several different attorneys with caseload limits ranging from 51 to 129 cases per attorney. Contracts range from \$109,592 for half of the district court and half of the juvenile offender caseload plus 77 adult felony cases, to \$39,000 for 51 adult felony cases per year.

Misdemeanor and juvenile offender contracts provide that two different attorneys will each accept 50 percent of the cases assigned. District Court contracts include representation for specific case types such as mental health hearings, substance abuse commitments and contempt proceedings. Conflict cases are distributed through list appointments.

Walla Walla County officials indicate the county's 1542 funding will be used to improve the availability of interpreters, investigators and expert witnesses.

2005 Statistics

Total adult criminal cases per 1000 population	46.5
Amount spent for public defense	\$484,056
Amount spent per capita	\$8.42

Adult felony

New adult superior court cases filed	538
New adult superior court cases per 1000 population	9.4
Number of new cases assigned to counsel	383
Percent of new cases assigned to counsel	71.1%

Adult misdemeanor

New county misdemeanor cases filed	1910
Total new district and municipal court misdemeanor cases filed in county	2138
Total new misdemeanor cases per 1000 population	37.2
Number of new cases assigned to counsel by county	308

Juvenile offender

New juvenile offender cases filed	274
New juvenile offender cases per 1000 population	4.8
Number of new cases assigned to counsel	208
Percent of new cases assigned to counsel	75.9%

WHATCOM COUNTY

Population:	180,800
Percent below poverty level in 2003:	13.0%
2006 1542 distribution:	\$84,421

Whatcom County provides public defense representation through the Whatcom County Public Defender, a county agency. Public Defender employees are compensated in parity with the Whatcom County Prosecutor's Office employees. The agency director is responsible for attorney supervision and the resolution of client complaints. The agency employs in-house staff for investigative services.

Whatcom County also contracts with 18 attorneys for conflict cases, who are paid \$75 per hour for class A felonies, \$65 per hour for class B felonies, and \$55 per hour for class C felonies and misdemeanors.

Whatcom County will use its 1542 funds to add an attorney and support staff to improve caseloads.

2005 Statistics

Total adult criminal cases per 1000 population	57.9
Amount spent for public defense	\$3,287,361
Amount spent per capita	\$18.18

Adult felony

New adult superior court cases filed	2064
New adult superior court cases per 1000 population	11.4
Number of new cases assigned to counsel	1884 (plus 28 PVs)
Percent of new cases assigned to counsel	91.3%
New cases assigned per FTE	222.7 (PVs = 1/3 case) ¹

Adult misdemeanor

New county misdemeanor cases filed	3619
Total new district and municipal court misdemeanor cases filed in county	8423
Total new misdemeanor cases per 1000 population	46.6
Number of new cases assigned to counsel by county	1434 (plus 274 PVs)
New cases assigned per FTE	542.1 (PVs = 1/3 case) ¹

¹ The agency separately tracks new cases and probation violations (PVs) assigned to it. FTE caseloads were derived by counting new cases as one and probation violation cases (PVs) as one-third of a case and utilizing the estimates provided by the agency for FTEs assigned to handle each case type. The misdemeanor FTE caseload figure also includes 101 alcohol commitment cases.

Juvenile offender

New juvenile offender cases filed	688
New juvenile offender cases per 1000 population	3.8
Number of new cases assigned to counsel	725 (plus 580 PVs) ²
Percent of new cases assigned to counsel	N/A ²
New cases assigned per FTE	459.2 (PVs = 1/3 case) ¹

¹ The agency separately tracks new cases and probation violations (PVs) assigned to it. FTE caseloads were derived by counting new cases as one and probation violation cases (PVs) as one-third of a case and utilizing the estimates provided by the agency for FTEs assigned to handle each case type.

² The reported number of new cases assigned to the public defenders exceeds the number of new cases filed as reported by AOC; accordingly, the percent of new cases assigned to counsel could not be determined.

WHITMAN COUNTY

2005 Population:	42,400
Percent below poverty level:	15.8%
2006 1542 distribution:	\$18,034

Whitman County delivers public defense representation through two separate contracts, both with the same law firm. One contract is for all Superior Court cases, including adult felony, juvenile offender, and other specific case types; the second contract covers district court cases.

The Superior Court contract is for \$138,000 per year; the district court contract is for \$112,108 per year. The primary provider sub-contracts with other attorneys for some representation and case types. Conflict cases are handled through list appointments.

Whitman County officials indicate that the county's 1542 funds will be used in a manner to be decided by the County Public Defense Committee. Proposals include expert witness and investigative fees, wireless internet for defender use, and expanding defense interpreter services.

2005 Statistics

Total adult criminal cases per 1000 population	55.5
Amount spent for public defense	\$262,145
Amount spent per capita	\$6.18

Adult felony

New adult superior court cases filed	306
New adult superior court cases per 1000 population	7.2
Number of new cases assigned to counsel	276
Percent of new cases assigned to counsel	90.2%

Adult misdemeanor

New county misdemeanor cases filed	1965
Total new district and municipal court misdemeanor cases filed in county	2055
Total new misdemeanor cases per 1000 population	48.5
Number of new cases assigned to counsel by county	524

Juvenile offender

New juvenile offender cases filed	85
New juvenile offender cases per 1000 population	2.0
Number of new cases assigned to counsel	77
Percent of new cases assigned to counsel	90.5%

YAKIMA COUNTY

2005 Population:	229,300
Percent below poverty level:	17.9%
2006 1542 distribution:	\$119,911

Yakima County delivers public defense representation through the Yakima County Department of Assigned Counsel (DAC), a county agency. The agency's director and senior staff attorneys are responsible for attorney supervision and resolution of client complaints. DAC provides counsel in all cases requiring representation, including criminal cases, mental health/involuntary treatment act detentions, civil contempt, and felony and misdemeanor probation violations. DAC administers contracts with a panel of attorneys who provide both overflow and conflict coverage.

DAC handles investigative services through two in-house investigators who also are available to contract counsel; in-office interpreter services are managed through contract appointment from an approved list of providers.

Yakima County intends to use the 1542 funding to add one full-time equivalent attorney in District Court and one full-time equivalent attorney for juvenile offender cases to meet increasing caseload. In the alternative, the funding may be used to increase contract compensation.

2005 Statistics

Total adult criminal cases per 1000 population	77.6
Amount spent for public defense	\$3,338,854
Amount spent per capita	\$14.56

Adult felony

New adult superior court cases filed	3113
New adult superior court cases per 1000 population	13.6
Number of new cases assigned to counsel	2631
Percent of new cases assigned to counsel	84.5%
New cases assigned per FTE	176

Adult misdemeanor

New county misdemeanor cases filed	4378
Total new district and municipal court misdemeanor cases filed in county	14,684
Total new misdemeanor cases per 1000 population	64.0
Number of new cases assigned to counsel by county	2997
New cases assigned per FTE	459

Juvenile offender

New juvenile offender cases filed	1746
New juvenile offender cases per 1000 population	7.6
Number of new cases assigned to counsel	1220
Percent of new cases assigned to counsel	69.9%
New cases assigned per FTE	282

RECOMMENDATIONS

Statewide, problems with public defense systems remain pervasive and deep. All the groups involved--the courts' Justice in Jeopardy initiative, county officials, individual public defense attorneys, the Washington State Bar Association, the Washington Defender Association, the Washington Association of Prosecuting Attorneys, the American Civil Liberties Union, and many others--maintain that significant efforts must be made to rectify our system.

In commencing appropriations of state funding for the improvement of public defense in the counties, the Legislature has signaled its commitment to carry out the state's constitutional public defense obligation. As declared in 2005, "the legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants..." SB 5454.

Washington State OPD has spent thousands of hours over the past year and one-half collecting county data, talking with county officials about their contract process, meeting public defenders across Washington in regional CLEs, and working with the Bar and other interested groups. To make progress toward reaching the goal of adequate indigent defense in all counties, the next steps are clear:

- **State funding for public defense must be significantly increased.**

Chronic problems such as excessive caseloads, a lack of investigator or staff support, inadequately experienced attorneys, and other deficiencies cannot be addressed without sufficient, targeted state funding. Increased state funding spent to work toward the Washington State Bar Association standards positively impacts counties' public defense systems. A number of counties have been able to implement significant improvements already with their 2006 state funds, including two new public defender offices, new county indigent defense coordinator positions for two counties, and increased investigator services in several counties.

- **Continued involvement by all justice community groups is vital to the success of improving public defense in Washington.**

It has taken thirty years to move past the mere documentation of statewide public defense problems. The active, collaborative participation of all who are impacted by public defense--the courts, WSBA, WDA, the counties, individual public defense attorneys, Washington State OPD, and others--continues to be critical to positively impacting this massive and complex system.

- **State oversight is critical to meeting the state's constitutional obligation to provide adequate public defense in Washington.**

Washington State OPD must diligently exercise its HB 1542 role of monitoring and evaluating the counties' use of state funds appropriated. As state funding is increased, state monitoring of the counties' public defense systems needs to be implemented. Currently, the vast majority of counties provide public defense

services through independent attorneys with little or no supervision or quality monitoring.

- **Public defense statewide can be improved through a system of sharing resources among jurisdictions.**

Recognizing and honoring the diversity of the jurisdictions in the state and the procedures developed locally to deal with their unique situations is critical to making effective improvements. The state should continue to work with the counties individually, and jointly where appropriate, to explore efficient and effective public defense improvements.

- **Washington State OPD must work with the counties to standardize the collection of data tracking the public defense services being provided.**

The State Auditor's new public defense BARS Code system must be fully utilized in order to track county public defense expenditures statewide. Washington State OPD should explore the possibility of enhancing the Judicial Information System's tracking of indigent criminal cases.

- **Training and other resources for contract and list-appointed attorneys is critical.**

Washington State OPD should continue regional attorney trainings for attorneys in rural areas and the support of public defense attorneys through consultation contracts with Washington Defender Association. County and regional resource improvements, such as indigent defense coordinator positions, should be developed.

A substantial leap forward in 2007-2009 is critical to progress in improving our system toward fulfillment of the state's duty to provide adequate representation to all indigent criminal defendants in Washington.

Appendix A

Washington State Office of Public Defense

Application for Public Defense Funding

Pursuant to Chapter 10.101 RCW

County _____	Contact name/title _____
Mailing address _____	
Phone _____	Email _____

NOTE: Applications are due August 31, 2006. If for some reason the county needs additional time, please contact OPD to request an extension.

1. In 2005, the county paid indigent defense expenses as follows: *(list attorney salaries and benefits, contract attorney amounts [including conflict attorneys], and investigator, expert and other indigent defense costs).*

Total dollar amount spent on indigent defense:	
(a) Total dollar amount spent on adult felony indigent defense:	
(b) Total dollar amount spent on adult misdemeanor indigent defense:	
(c) Total dollar amount spent on indigent dependency/termination parents' representation:	
(d) Total dollar amount spent on juvenile indigent defense:	

This information was () was not () derived from the State Auditor Budgeting Accounting & Reporting System (BARS) categories. If BARS category codes are not currently used for public defense budget reporting, when will the BARS reporting system be implemented? _____

2. In 2005, attorneys providing indigent defense representation had the following caseloads:

Fill in section 2(a) if the county has a public defender agency, such as a department of assigned counsel or one or more non-profit public defense firm(s) whose practice is limited to public defense.

2(a) Counties with public defender agencies.	Number of cases filed as reported to the Administrative Office of the Courts	Number of cases assigned to public defenders	Number of full-time equivalent public defenders	Caseload per full-time equivalent public defender	Number of cases assigned to conflict counsel
Superior Court adult felonies					
District Court adult misdemeanors and gross misdemeanors					
Juvenile Court offender cases					
Juvenile Court dependency/termination cases					
"Becca" cases (truancy contempt, at-risk youth, CHINS)					

Fill in section 2(b) if the county contracts with public defense attorneys or if public defense attorneys are appointed by the court from a list:

2(b) Counties with contract or list appointed public defense attorneys	Number of cases filed as reported to the Administrative Office of the Courts	Number of cases assigned to public defense attorneys	Number of attorneys with public defense contracts (or on court's appointment list)
Superior Court adult felonies			
District Court adult misdemeanors and gross misdemeanors			
Juvenile Court offender cases			
Juvenile Court dependency/termination cases			
"Becca" cases (truancy contempt, at-risk youth, CHINS)			

3. If the county has public defense contracts, fill out the Table of Public Defense Contracts (Table I), and provide a copy of each current contract in alphabetical order by attorney name. (If possible, please provide scanned copies of contracts, by CD or email attachment. Hard copies are acceptable.)

4. If the county courts appoint public defense attorneys from a list, provide the name of each attorney and the compensation paid per case or per hour in the Table of List-Appointed Public Defense Attorneys (Table II).

5. Prior to or upon receipt of Chapter 10.101 RCW public defense funds, the county will require that all indigent defense attorneys attend OPD-approved training at least once per calendar year. Yes () No ()

6. Prior to or upon receipt of Chapter 10.101 RCW public defense funds, the county will require that all private attorneys who contract to provide public defense services begin to report their "hours billed for nonpublic defense legal services . . . including number and types of private cases." (RCW 10.101.050) Yes () No ()

7. The county has adopted a public defense ordinance, which is attached; or, the county is aware that under RCW 10.101.060(1)(a)(i), an ordinance addressing public defense standards must be adopted during calendar year 2007 to maintain eligibility for funding. Yes () No ()

8. The county plans to use these funds for the following purpose; or, alternatively, will employ the following process to determine how to use the funds:

9. Certification

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information is true and correct.

Signature

Date

Printed Name

Title

Place

Washington State Office of Public Defense

Table I: Public Defense Contracts

Name of attorney/firm	Number of Superior Court cases per contract	Number of District Court cases per contract	Number of Juvenile Court offender cases per contract	Number of dependency/termination cases per contract	Conflict cases only? Yes/No (If yes, list payment)

Washington State Office of Public Defense
Table II: List-Appointed Public Defense Attorneys

Name of Attorney/Firm	Method and Rate of Payment (per case/per hour, etc.)

Washington State Office of Public Defense

RCW 10.101.060 Estimated County Funding Distribution

County	2005 Population	2004 Filings	Total Distribution
Adams	17,000	211	\$12,723
Asotin	20,900	220	\$13,717
Benton	158,100	1,683	\$77,882
Chelan	69,200	779	\$37,425
Clallam	66,800	564	\$31,478
Clark	391,500	2,574	\$146,339
Columbia	4,100	40	\$5,838
Cowlitz	95,900	1,748	\$67,342
Douglas	34,700	261	\$17,467
Ferry	7,400	68	\$7,198
Franklin	60,500	454	\$27,441
Garfield	2,400	10	\$4,741
Grant	79,100	848	\$41,124
Grays Harbor	69,800	677	\$34,945
Island	76,000	263	\$25,616
Jefferson	27,600	146	\$13,146
King	1,808,300	10,209	\$618,603
Kitsap	240,400	2,025	\$102,729
Kittitas	36,600	359	\$20,336
Klickitat	19,500	213	\$13,264
Lewis	71,600	1,008	\$43,729
Lincoln	10,100	39	\$6,989
Mason	51,900	531	\$27,716
Okanogan	39,600	363	\$21,026
Pacific	21,300	248	\$14,508
Pend Oreille	12,200	78	\$8,394
Pierce	755,900	6,067	\$306,757
San Juan	15,500	50	\$8,328
Skagit	110,900	977	\$50,645
Skamania	10,300	110	\$8,837
Snohomish	655,800	3,101	\$211,584
Spokane	436,300	4,139	\$194,985
Stevens	41,200	293	\$19,556
Thurston	224,100	2,385	\$108,703
Wahkiakum	3,900	34	\$5,646
Walla Walla	57,500	612	\$30,878
Whatcom	180,800	1,765	\$84,421
Whitman	42,400	224	\$18,034
Yakima	229,300	2,785	\$119,911
Total	6,256,400	48,161	\$2,610,000

Note: City grant funds are not reflected in this Estimated County Funding Distribution table. (RCW 10.101.080)

Appendix B

Chapter 10.101 RCW

Indigent defense services

[Chapter Listing](#)

RCW Sections

- [10.101.005](#) Legislative finding.
- [10.101.010](#) Definitions.
- [10.101.020](#) Determination of indigency -- Provisional appointment -- Promissory note.
- [10.101.030](#) Standards.
- [10.101.040](#) Selection of defense attorneys.
- [10.101.050](#) Appropriated funds -- Application, reports.
- [10.101.060](#) Appropriated funds -- Use requirements.
- [10.101.070](#) County moneys.
- [10.101.080](#) City moneys.

10.101.005 **Legislative finding.**

The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches.

[2005 c 157 § 1; 1989 c 409 § 1.]

10.101.010 **Definitions.**

The following definitions shall be applied in connection with this chapter:

(1) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(2) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are less than the

anticipated cost of counsel but sufficient for the person to pay a portion of that cost.

(3) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(4) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to defray the defendant's basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations.

[1998 c 79 § 2; 1997 c 59 § 3; 1989 c 409 § 2.]

10.101.020

Determination of indigency — Provisional appointment — Promissory note.

(1) A determination of indigency shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall determine whether the person is indigent pursuant to the standards set forth in this chapter.

(2) In making the determination of indigency, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

(3) The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.

(4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

(5) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. The person receiving the appointment of counsel shall also sign an affidavit swearing

under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.

(6) The office or individual charged by the court to make the determination of indigency shall provide a written report and opinion as to indigency on a form prescribed by the office of public defense, based on information obtained from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter.

[1997 c 41 § 5; 1989 c 409 § 3.]

10.101.030 Standards.

Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington state bar association for the provision of public defense services should serve as guidelines to local legislative authorities in adopting standards.

[2005 c 157 § 2; 1989 c 409 § 4.]

10.101.040 Selection of defense attorneys.

City attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will provide indigent defense services.

[1989 c 409 § 5.]

10.101.050 Appropriated funds — Application, reports.

The Washington state office of public defense shall disburse appropriated funds to counties and cities for the purpose of improving the quality of public defense services. Counties may apply for up to their pro rata share as set forth in RCW [10.101.060](#) provided that counties conform to application procedures established by the office of public defense and improve the quality of services for both juveniles and adults. Cities may apply for moneys pursuant to the grant program set forth in RCW [10.101.080](#). In order to receive funds, each applying county or city must require that attorneys providing public defense services attend training approved by the office of public defense at least once per calendar year. Each applying county or city shall report the expenditure for all public defense services in the previous calendar year, as well as case statistics for that year, including per attorney caseloads, and shall provide a copy of each current public defense contract to the office of public defense with its application. Each individual or organization that contracts to perform public defense services for a county or city shall report to the county or city hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases.

[2005 c 157 § 3.]

10.101.060 Appropriated funds — Use requirements.

(1)(a) Subject to the availability of funds appropriated for this purpose, the office of public defense shall disburse to applying counties that meet the requirements of RCW [10.101.050](#) designated funds under this chapter on a pro rata basis pursuant to the formula set forth in RCW [10.101.070](#) and shall disburse to eligible cities, funds pursuant to RCW [10.101.080](#). Each fiscal year for which it receives state funds under this chapter, a county or city must

document to the office of public defense that it is meeting the standards for provision of indigent defense services as endorsed by the Washington state bar association or that the funds received under this chapter have been used to make appreciable demonstrable improvements in the delivery of public defense services, including the following:

(i) Adoption by ordinance of a legal representation plan that addresses the factors in RCW 10.101.030. The plan must apply to any contract or agency providing indigent defense services for the county or city;

(ii) Requiring attorneys who provide public defense services to attend training under RCW 10.101.050;

(iii) Requiring attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies. This subsection (1)(a)(iii) does not apply to cities receiving funds under RCW 10.101.050 through 10.101.080;

(iv) Requiring contracts to address the subject of compensation for extraordinary cases;

(v) Identifying funding specifically for the purpose of paying experts (A) for which public defense attorneys may file ex parte motions, or (B) which should be specifically designated within a public defender agency budget;

(vi) Identifying funding specifically for the purpose of paying investigators (A) for which public defense attorneys may file ex parte motions, and (B) which should be specifically designated within a public defender agency budget.

(b) The cost of providing counsel in cases where there is a conflict of interest shall not be borne by the attorney or agency who has the conflict.

(2) The office of public defense shall determine eligibility of counties and cities to receive state funds under this chapter. If a determination is made that a county or city receiving state funds under this chapter did not substantially comply with this section, the office of public defense shall notify the county or city of the failure to comply and unless the county or city contacts the office of public defense and substantially corrects the deficiencies within ninety days after the date of notice, or some other mutually agreed period of time, the county's or city's eligibility to continue receiving funds under this chapter is terminated. If an applying county or city disagrees with the determination of the office of public defense as to the county's or city's eligibility, the county or city may file an appeal with the advisory committee of the office of public defense within thirty days of the eligibility determination. The decision of the advisory committee is final.

[2005 c 157 § 4.]

10.101.070

County moneys.

The moneys shall be distributed to each county determined to be eligible to receive moneys by the office of public defense as determined under this section. Ninety percent of the funding appropriated shall be designated as "county moneys" and shall be distributed as follows:

(1) Six percent of the county moneys appropriated shall be distributed as a base allocation among the eligible counties. A county's base allocation shall be equal to this six percent divided by the total number of eligible counties.

(2) Ninety-four percent of the county moneys appropriated shall be distributed among the eligible counties as follows:

(a) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the population of the county as a percentage of the total population of all eligible counties; and

(b) Fifty percent of this amount shall be distributed on a pro rata basis to each eligible county based upon the annual number of criminal cases filed in the county superior court as a percentage of the total annual number of criminal cases filed in the superior courts of all eligible counties.

(3) Under this section:

(a) The population of the county is the most recent number determined by the office of financial management;

(b) The annual number of criminal cases filed in the county superior court is determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts;

(c) Distributions and eligibility for distributions in the 2005-2007 biennium shall be based on 2004 figures for the annual number of criminal cases that are filed as described under (b) of this subsection. Future distributions shall be based on the most recent figures for the annual number of criminal cases that are filed as described under (b) of this subsection.

[2005 c 157 § 5.]

10.101.080

City moneys.

The moneys under RCW [10.101.050](#) shall be distributed to each city determined to be eligible under this section by the office of public defense. Ten percent of the funding appropriated shall be designated as "city moneys" and distributed as follows:

(1) The office of public defense shall administer a grant program to select the cities eligible to receive city moneys. Incorporated cities may apply for grants. Applying cities must conform to the requirements of RCW [10.101.050](#) and [10.101.060](#).

(2) City moneys shall be divided among a maximum of five applying cities and shall be distributed in a timely manner to accomplish the goals of the grants.

(3) Criteria for award of grants shall be established by the office of public defense after soliciting input from the association of Washington cities. Award of the grants shall be determined by the office of public defense.

[2005 c 157 § 6.]