

House Judiciary Workgroup on
Misdemeanor Public Defense Costs in
Washington State

Report and Findings

December 2014

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Executive Summary

Many cities and counties have expressed concern about funding public defense services in municipal and district courts following the adoption of the Washington Supreme Court's Standards for Indigent Defense (Standards), which set maximum public defense attorney caseload limits. For many cities and counties the caseload limits will necessitate hiring more attorneys in 2015 to comply with the limit of 400 (or 300 case weighted) assignments. Other cities and counties face the possibility of increased contract fees to retain attorneys to work in their courts. In response, the House Judiciary Committee created a workgroup on public defense costs. The workgroup was tasked with examining:

1. The cost of misdemeanor public defense in Washington.
2. Current public defense costs, and revenue generated by misdemeanor courts.
3. The impacts and additional costs associated with implementing the Supreme Court Standards.
4. Alternative case resolutions that may mitigate costs.
5. Caseloads, costs and revenues for each misdemeanor court in the state.

Another factor contributing to the cost of misdemeanor defense services is the December 2013 ruling of the U.S. District Court in Wilbur v. City of Mount Vernon, et.al. The cities of Mount Vernon and Burlington were ordered to pay over \$2 million in attorney fees and make substantial improvements in public defense because their services deprived indigent defendants of their Sixth Amendment right to the assistance of counsel.

Highlights of the workgroup report include:

Data Collection. A survey was developed by the workgroup and sent to all cities and counties to calculate the statewide cost of misdemeanor public defense. The responses reflected the wide range in population size of the jurisdictions and the variations in the provision of indigent defense services.

Impacts of Standards. While many jurisdictions have been preparing for the implementation of the misdemeanor caseload standards for several years by adjusting their staffing and pay rates, some jurisdictions have not addressed the issues and may have to substantially increase their budgets in 2015 to comply with the Standards.

Costs Associated with Misdemeanor Public Defense. While most states are primary funders of indigent defense services, virtually all costs for trial-level criminal public defense in Washington are borne by municipalities and counties. The State provides funding that covers 2.1% of all estimated statewide city public defense expenses and 4.4% of county public defense expenses. State funding is distributed to a limited number of cities that are selected through the grant process in RCW 10.101.080. All counties are eligible for, and 38 counties historically have received, state funding based on the formula in RCW 10.101.070.

Revenue Generated by Misdemeanor Courts. The lack of uniform reporting by the local jurisdictions makes it difficult to accurately determine the revenue generated by municipal and district courts.

Alternative Case Resolution. In an attempt to mitigate the cost of providing indigent defense services, many cities and counties have experimented with pre-filing diversion programs and post-filing disposition alternatives. Other cost reduction strategies adopted by some courts include prosecutorial pre-filing review of case referrals and regular reductions of certain misdemeanors to infractions.

Following its data gathering and analysis, the workgroup established 11 findings and five recommendations. Findings reflect the diverse nature of misdemeanor courts in Washington, including a lack of uniform comprehensive data gathering and reporting. Likewise, local funding levels for misdemeanor public defense vary greatly, and at the time they were surveyed, many jurisdictions were uncertain how Supreme Court Standards and a recent federal court decision would impact their budgets. Most jurisdictions provide misdemeanor public defense through contracts with private attorneys.

Recommendations include implementing statewide uniform tracking for public defense appointments and costs, further research into alternative case resolutions, and continued monitoring of the impact of public defense Standards in local jurisdictions.

Introduction

Public defense services in Washington’s courts are administered and largely funded by county and city governments. Each city and county operates its own autonomous public defense organization, which allows for a variety of structures and different models of providing services. Each of these structures shares the same fundamental goal – providing constitutionally required defense representation -- but maintains a variety of administrative practices and funding levels. Since 1989 RCW 10.101.030 has required each jurisdiction to adopt local standards that ensure indigent defendants’ constitutional right to effective representation.¹ Significant developments in recent years have established specific criteria that must be followed, which noticeably impact public defense services, particularly in misdemeanor cases.

In 2012 the Washington Supreme Court adopted the Standards for Indigent Defense² (Supreme Court Standards) which establish various requirements for public defense attorneys. Among these, the Court requires all attorneys with public defense cases to adhere to caseload limits, so that they have sufficient time to effectively represent their clients.³ Felony and juvenile caseload limits became effective in October 2013. However, because many misdemeanor public defense attorneys statewide had been operating with caseloads exceeding the Supreme Court’s limits, local jurisdictions expressed the need for additional time to prepare and budget for the change in practice. As a result, the Court delayed implementation of misdemeanor caseload standards to January 2015.

Additionally, in December 2013, the U.S. District Court of the Western District of Washington ruled decisively against the cities of Mount Vernon and Burlington in Wilbur v. City of Mount Vernon, et.al. The Wilbur decision held the cities liable under 42 U.S.C. §1983 for systemic flaws that deprived indigent criminal defendants of their Sixth Amendment right to the assistance of counsel. The decision imposed injunctive relief as well as plaintiffs’ attorneys’ fees in the amount of \$2.2 million, in addition to the amounts spent on defending the cities.⁴ The Wilbur decision has had a substantial impact in Washington, as many cities and counties are using it as a guide for making improvements to public defense. Furthermore, Wilbur appears to be having a national impact, as seen in the recent settlement agreement in Hurrel-Harring v. New York, 15 N.Y.3d 8 (2010). In this case, the New York State Court of Appeals recognized a cognizable claim for state relief based on allegations that New York’s county-based

¹ While the statute did not dictate specific language, it directed local governments to address certain issues and recommended that “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.”

² See Appendix G. The Supreme Court Standards for Indigent Defense derive from the Washington State Bar Association Standards for Indigent Defense Services (updated in 2011). Starting in 1990, the WSBA endorsed the Washington Defender Association Standards for Indigent Defense Services (originally published in 1984).

³ All attorneys appointed to represent indigent defendants are required by court rule to file quarterly certifications affirming their compliance with the Supreme Court Standards, including adherence to caseload limits. An example certification form is found in Appendix H.

⁴ See Appendix F for a description of the Wilbur decision.

public defense system was inadequate to ensure the constitutional right to counsel, and the state recently agreed to pay more than \$3.5 million to improve defense in five of the state's 62 counties.

In response to these developments, Washington cities and counties are now carefully evaluating their public defense delivery systems, and planning for changes to better align their programs with the Standards and the Wilbur decision. Such changes in most jurisdictions will have budgetary impacts.

The request to form this workgroup followed the failure of legislation (SB 6249, HB 2497) that would have financed some of the projected costs for adhering to caseload standards by increasing legal financial obligations imposed on defendants. On March 13, 2014 the Washington House Judiciary Committee Chair and Ranking Member requested that the Washington State Office of Public Defense (OPD) convene an interim workgroup to examine the cost of misdemeanor public defense in Washington's courts of limited jurisdiction. (See Appendix A.) The small workgroup, composed of stakeholders of various interest groups, was charged with the following:

1. Examine the cost of misdemeanor public defense in Washington's courts of limited jurisdiction.
2. Create an inventory of current public defense costs in the misdemeanor courts, and revenue generated by these courts.
3. Address potential impacts and additional costs associated with implementing the Supreme Court Standards.
4. Address best practices for alternative case resolution that may mitigate costs.
5. To the extent practicable, provide an individualized analysis for each misdemeanor court in the state.

I. The Misdemeanor Public Defense Costs Workgroup

The Judiciary Committee asked OPD to convene a “small core workgroup consisting of at least two representatives each of county and city associations, misdemeanor judges, public defenders, and prosecutors.” The professional associations representing each stakeholder group nominated the following representatives to serve on the workgroup.

Member Name	Appointed By
The Honorable Sam Meyer, Thurston County District Court	District and Municipal Court Judges Association
The Honorable Rebecca Robertson, Federal Way Municipal Court	District and Municipal Court Judges Association
Joanne Moore, Director, OPD	Office of Public Defense Advisory Committee
Helen Anderson, Professor, UW School of Law	Office of Public Defense Advisory Committee
Candice Bock, Government Relations Advocate	Association of Washington Cities
Garmon Newsom II, Senior Assistant City Attorney, City of Renton	Association of Washington Cities
Arthur “Pat” Fitzpatrick, Deputy City Attorney, City of Kent	Association of Washington Cities
Tami Perdue, Chief Prosecuting Attorney, City of Kent	Association of Washington Cities
Kathy Knox, Director of the City of Spokane Public Defender	Washington Defender Association
Daniel McGreevy, Contract Public Defender, City of Bellingham	Washington Defender Association
Brian Enslow, Senior Policy Director	Washington State Association of Counties
Greg Banks, Island County Prosecuting Attorney	Washington Association of Prosecuting Attorneys
Denis Tracy, Whitman County Prosecuting Attorney	Washington Association of Prosecuting Attorneys

The group met in person five times and one time telephonically. The early meetings were co-chaired by Joanne Moore and Pat Fitzpatrick. The latter meetings were co-chaired by Joanne Moore and Candice Bock. OPD employees provided staff support to the workgroup.

II. Data Collection

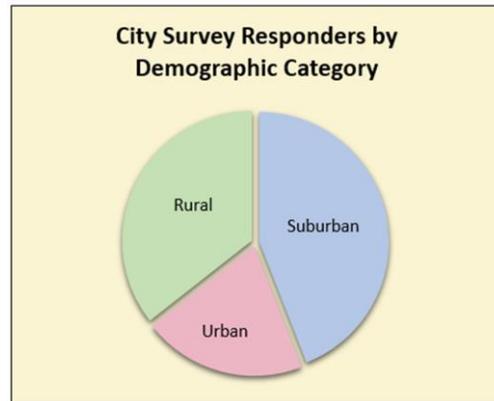
Lack of Pre-Existing Statewide Data on Public Defense Misdemeanor Cases and Costs: In Washington State all criminal and juvenile offender public defense services are coordinated and funded at the local level. Municipalities are responsible for ensuring public defense representation in the city-level prosecution of misdemeanor offenses, and counties oversee public defense for county-level prosecution of felonies, misdemeanors and juvenile offender cases. Because of the decentralized nature of public defense, there is no central repository of complete public defense data. While some information is available from OPD through its public defense improvement program established by RCW 10.101.050-080, it represents only a small segment of the state's municipalities. In addition, the Judicial Information System (JIS), which serves as the case management system for courts statewide, does not identify whether cases have public defense representation.

Survey Planning and Design: The workgroup determined that the best way to assemble information on statewide public defense costs was by sending out a web-based survey. It was anticipated that not all jurisdictions would respond, but that the information gathered would become the building blocks from which to identify statewide trends. Workgroup members recommended that survey respondents have the option of answering anonymously due to concerns with the recent Wilbur litigation. The survey tool allowed staff to identify whether a particular jurisdiction had responded, but intentionally did not tie responses to individual responders, unless affirmatively authorized by the jurisdiction.

Over the course of two meetings the workgroup discussed, reviewed, and agreed upon the questions for the survey. (See Appendix D for the version sent to city administrators.) The questions in the survey were designed to gather data on public defense costs, case assignments, anticipated financial impact of the mandatory caseload limits, and included some questions on local practices. The survey was not intended to be an evaluative tool for measuring the quality or effectiveness of local public defense services. Web links to the city survey were emailed to city managers and mayors. Links to the county survey were emailed to each county's designated staff responsible for overseeing public defense services or contracts. After responses were received, AWC and OPD staff followed up with additional jurisdictions that had not responded to the survey or that had responded with partial information. In result, responses from 74 cities and 24 counties provided financial information for purposes of evaluating the anticipated financial impact of the forthcoming misdemeanor caseload limits.

Demographic Profile of City Survey Responders: A wide variety of cities responded to the survey. One survey question requested responders to categorize themselves as urban, suburban, or rural. Fifty-eight cities responded to the question, and as illustrated in Table 1, 43% identified themselves as suburban, 20% identified as urban, and 36% identified as rural.

Table 1



Seventy-three city responders identified their population size by the range presented in Table 2. To determine whether the survey responders were representative of cities statewide based on population size, their population sizes were compared against population data maintained by the Washington State Office of Financial Management (OFM). To further evaluate the representative quality of the responding cities, OPD staff consulted the Caseloads Reports maintained by the Administrative Office of the Courts (AOC), which reported 186 municipalities had criminal filings in 2013. This allowed the population of cities in the survey to be compared with the population of cities statewide that had criminal filings in 2013.

Table 2

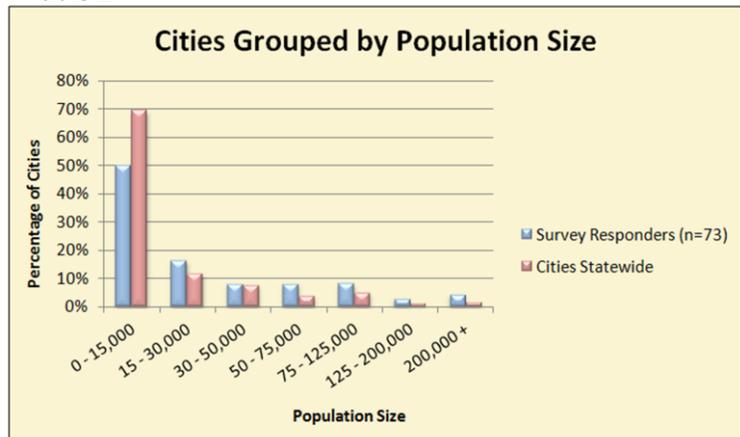
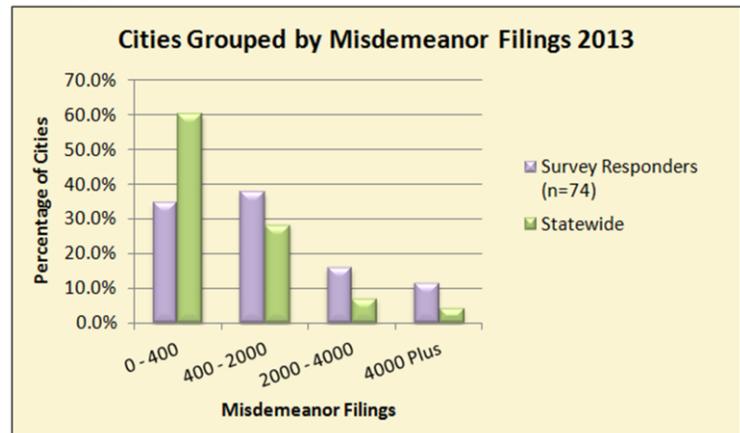


Table 2 shows the percentage of all Washington cities in each population range, compared with the percentage of city survey responders in each population range. Overall, it appears that the survey responders tend to represent Washington cities based on population size. The one grouping for which the survey appears to have a markedly lower representation is the city population range of 0 – 15,000. One possible explanation for the lower response rate from these cities is that they utilize a relatively small amount of public defense services, and therefore were less likely to respond to the survey. However, such assumption is not intended to undervalue the financial impact smaller cities may bear with the 2015 implementation of misdemeanor public defense attorney caseload limits.

Table 3

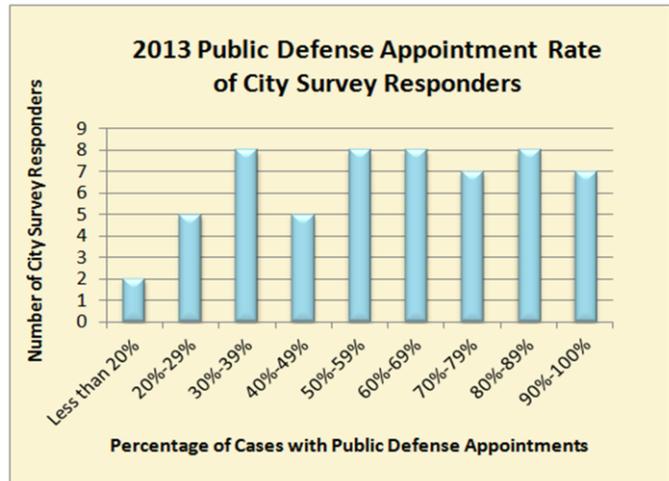


Forty-two city survey responders identified the total number of misdemeanors filed in

their courts in 2013. These answers were grouped into ranges, and the percentage of responders in each range was compared with statewide data on municipal courts from the AOC Caseloads Reports. As it did with population, this comparison was made to determine whether the survey results fairly represented jurisdictions based on the quantity of misdemeanor filings. Table 3 shows results similar to the population comparison. The survey responders are underrepresented in the category of 400 or fewer misdemeanor filings per year. However, for the other identified groupings, the survey responders appear to be similar.

Some misdemeanor courts appoint public defense attorneys to a small percentage of defendants, while others appoint public defense attorneys in the majority of all misdemeanor criminal filings.⁵ Survey responders were asked to report the total number of misdemeanor cases filed in 2013, and the number of cases that public defense attorneys were appointed to. These results provide a description of the indigency rates of jurisdictions responding to the survey. The data collected cannot be compared to statewide averages, because data on public defense appointments are not available through the courts' case management system. As shown in Table 4, a fairly even number of cities responding to the survey report public defense appointment rates in all ranges from 30% to 90%. Only two of the cities responding to the survey had public defense appointment rates of less than 20%. The average indigency rate for all cities came to 61%.⁶

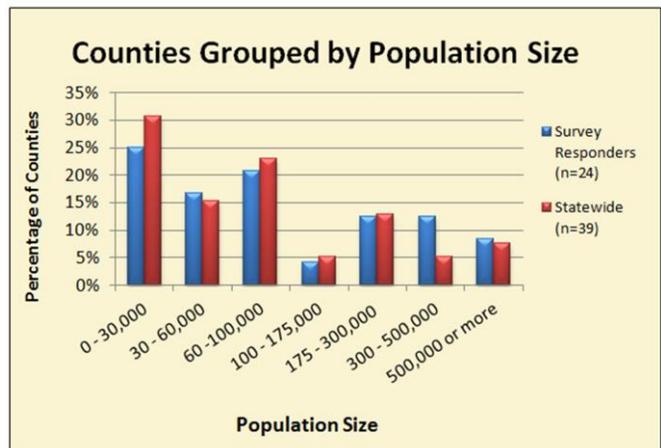
Table 4



Demographic Profile of County Survey

Responders: Twenty-four of Washington's thirty-nine counties responded to the misdemeanor costs survey. Some county responders chose to remain anonymous. As seen in Table 5 the survey responders fairly represented the counties statewide by population size, though counties with smaller populations are somewhat underrepresented.

Table 5

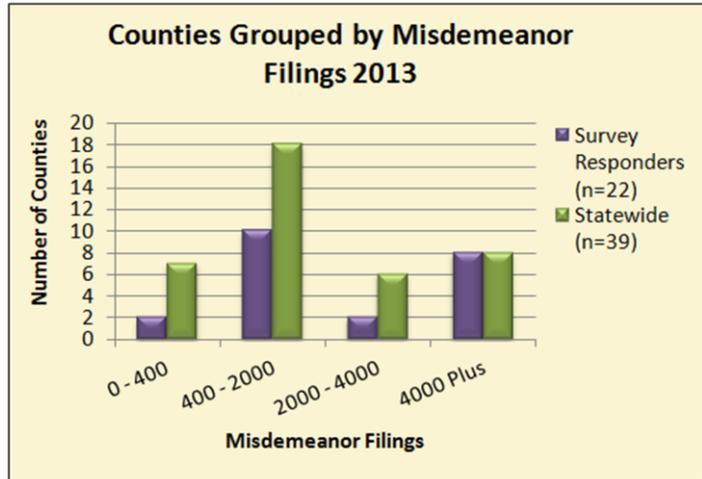


⁵ For more information on trial courts' application of indigency screening laws, see OPD's 2014 report, Determining and Verifying Indigency for Public Defense, found at: www.opd.wa.gov/documents/0185-2014_Determining_Indigency.pdf

⁶ RCW 10.101.010 and 020 define "indigent" and establish procedures and criteria to be used in determining whether a person qualifies for a public defense attorney.

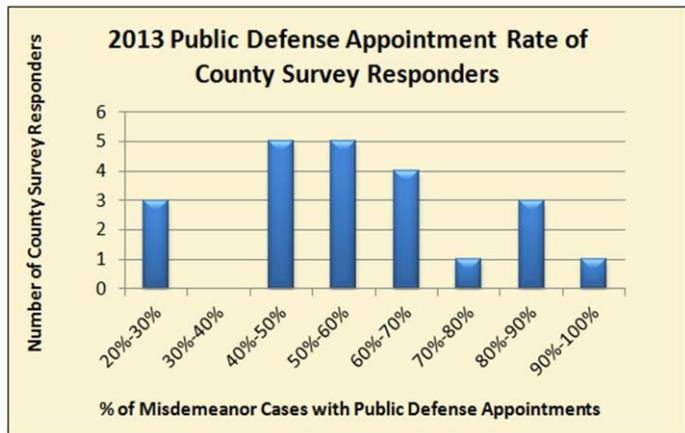
Similar to cities, the counties that responded to the survey were grouped based on the number of misdemeanor criminal filings in district courts. The percentage of each grouping among survey responders was compared with the counties statewide to determine whether the responding counties were representative of counties statewide. All district courts with 4,000 or more misdemeanor filings in 2013 participated in the survey.

Table 6



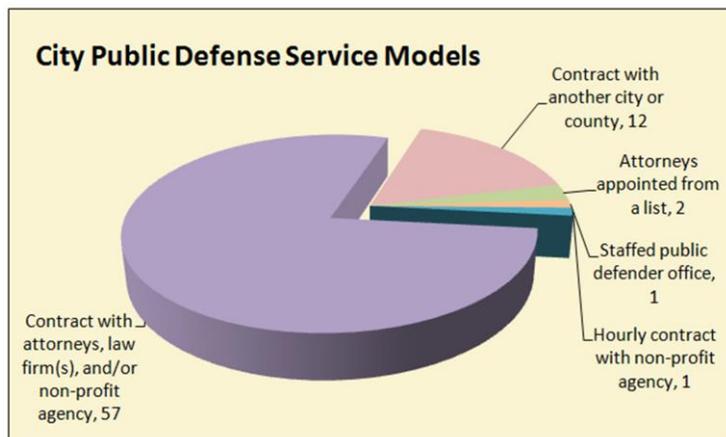
The average public defense appointment rate appears to be lower in county survey responders than city survey responders. As seen in Table 7 the majority of counties responding to the survey had public defense appointment rates in the area of 40% to 60%. Only one county reported that public defense attorneys were appointed in 90% to 100% of misdemeanor cases in 2013.

Table 7



Public Defense Delivery Systems: Cities and counties, which are primarily responsible for administering and funding trial level criminal public defense services in Washington, use a variety of attorney employment models. Among city survey responders and as illustrated in Table 8, most cities (78%) contract with individual attorneys, firms, and/or non-profit organizations for attorneys to deliver public defense services. Seventeen percent of survey responders indicated that they contract with another city or county to provide public defense services. Not identified in this group, however, is whether the contracted city/county has an in-house public defense agency, or contracts with attorneys and firms. Only two cities indicated that they do not maintain contracts, and instead assign public defense cases to attorneys on a local "list." One responding city has a staffed public defender office, and one city maintains an hourly contract with

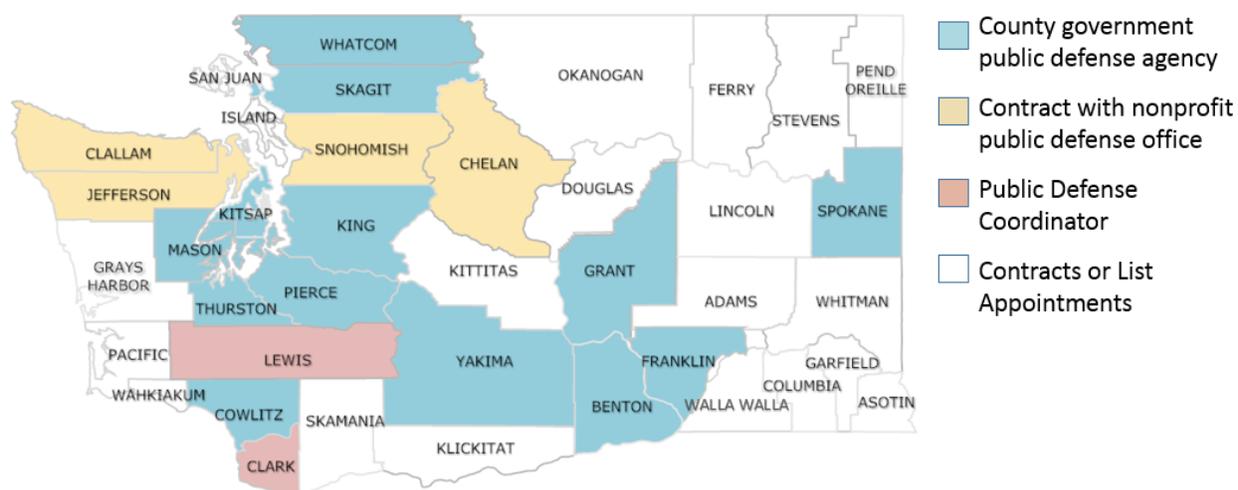
Table 8



a nonprofit agency. These findings are illustrated in Table 8.

The breakdown of public defense service models is different in counties, as seen in Table 9. Thirteen counties have county government public defense agencies. These agencies most commonly consist of attorneys and other staff– supervisors, investigators, social workers, paralegals, administrative assistants, etc. In addition, they typically contract with private attorneys for conflict and overflow cases. Four counties contract with nonprofit public defense offices which, similar to government public defense agencies, handle the majority of public defense cases. Two counties employ coordinators to specialize in public defense and oversee contract attorney work. The remaining 20 counties contract with attorneys for public defense services or appoint attorneys as needed from a panel list.

Table 9 County Public Defense Service Models



III. Impacts Associated with Standards

The Supreme Court Standards for Indigent Defense limit full-time public defense attorneys’ caseloads to 400 misdemeanors per year or 300 misdemeanors per year in jurisdictions that adopt a numerical case-weighting system. Currently many public defense attorneys’ caseloads fall under this limit, while many do not. Moreover, in the *Wilbur* decision Judge Lasnick identified a list of local regulatory practices that Mount Vernon and Burlington should put into in place to ensure defendants’ right to counsel. These practices include supervisory oversight, detailed data reporting, and active use of investigators and expert witnesses. While some jurisdictions have already built these components into their public defense systems, many have not.

The city and county surveys asked responders to identify whether the new misdemeanor public defense attorney caseload limits will impact local budgets. Where responders indicated that there would be a fiscal impact, they were invited to provide an explanation. As illustrated in Table 10 the majority of cities

indicated that caseload limits will likely create an adverse financial impact. Forty-four cities (59.5%) answered that there would be an adverse financial impact, eighteen cities (24.3%) reported that there would not, and twelve cities (15.2%) were unsure. A smaller portion of counties anticipated an adverse financial impact. Eleven counties (45.8%) answered there would be an impact, 11 counties answered that there would not, and two counties (8.3%) were unsure.

Table 10

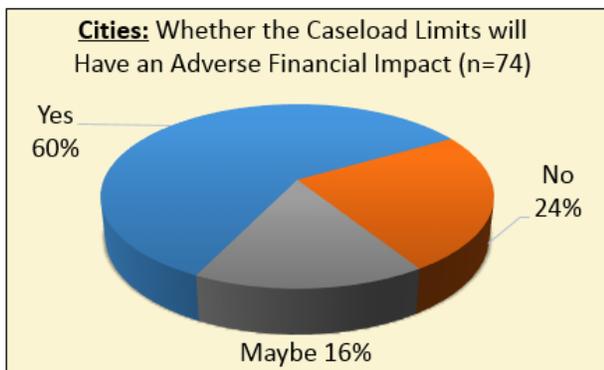
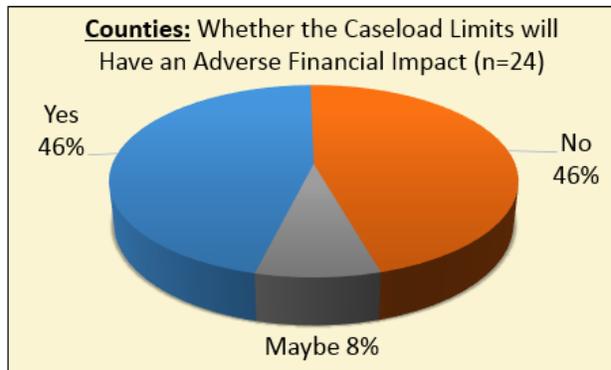


Table 11



It is important to note that the survey was distributed in June 2014, with follow-up reminders sent in July and August. At that time most cities and counties had not completed their budgets for 2015, and many responders were unsure or vague as to what the anticipated financial impact may be. A survey distributed later in the year may have yielded different results. A survey conducted in future years reasonably could be expected to provide more informed responses.

The data submitted in the survey were grouped and analyzed based on the jurisdictions that anticipated a fiscal impact versus those that did not. The data were evaluated using various factors to identify whether any specific practices could serve as an indicator of whether jurisdictions are more or less likely to face a fiscal impact. However, no such single qualifier appeared.

For example, the groupings were evaluated based on public defense expenditures. In the cities that provide public defense through contracted attorneys and firms, the average amount paid per public defense case in 2013 was \$209 (this figure primarily includes attorney compensation, but also includes related costs such as investigators and experts). However, there was no significant difference in per case costs between groups that did and did not identify a fiscal impact due to caseload limits.

The survey asked responders to identify local practices resulting in alternative case resolutions, as opposed to traditional criminal case processing. Such practices include pre-file diversion, regularly reducing certain misdemeanor charges to infractions, and prosecutorial review of police charges prior to filing in court. The survey showed no strong correlation between jurisdictions that engage in such practices, and whether they expect to face financial challenges with the new attorney caseload limits. The majority of the cities that reported engaging in such practices (27 out of 37) also anticipated needing to increase public defense expenses due to the caseload limits.

The public defense appointment rate, however, appears to bear some relationship with whether cities anticipate facing budget increases due to misdemeanor caseload limits. Fifty-eight responding cities provided sufficient information to determine their public defense appointment rate in 2013. Of those cities that anticipated a fiscal impact, their average appointment rate was 62%. Conversely the appointment rate of cities not anticipating a fiscal impact was 50%.

Such a difference, however, did not appear among the county responders. The average public defense appointment rate for misdemeanors filed in county district courts was 60% among counties that identified a fiscal impact, and 57% among counties that anticipated no fiscal impact.

At this point, it is difficult to come to any reasonable conclusions about the characteristics of jurisdictions that anticipate fiscal difficulties due to the upcoming caseload limits, versus those that do not. What the survey illustrates, however, is that jurisdictions of all sizes and economic levels anticipate implementing change of some degree in their public defense delivery systems. A more comprehensive analysis regarding the fiscal impact could likely be accomplished after the caseload limits take effect.

IV. Misdemeanor Public Defense Expenses Prior to Mandatory Caseload Limits

The Cost of Misdemeanor Public Defense for Cities and Counties Prior to Mandatory Caseload Limits: The survey answers, coupled with other information maintained by OPD, help identify the approximate cost of misdemeanor public defense statewide in 2013. While these figures do not likely reflect the expenses that will be incurred after mandatory misdemeanor caseload limits begin in January 2015, the figures provide a baseline understanding of public defense costs prior to the rule taking effect. Based on the following extrapolation processes, it is estimated that statewide public defense costs for misdemeanors in 2013 was \$51,155,452.

Among the cities that answered the survey, their cumulative public defense expenses totaled \$19.6 million. The cost per case was determined by dividing this amount by the number of public defense cases these jurisdictions reported in 2013. The average cost per case, however, was largely different among jurisdictions that have or contract with city/county public defense agencies, compared to those that contract with attorneys or firms. The higher cost for city/county public defense agencies, \$582 per case, is attributable to the fact that most agencies are at or near the caseload limits, and maintain in-house resources such as supervisors, investigators, social workers, and legal assistants. The average per-case amount spent in cities that do not have or use public defense agencies is \$209. Based on this information, the workgroup estimates

The approximate statewide cost of misdemeanor public defense services in 2013, prior to mandatory caseload limits, was \$51,155,452.

that the cumulative amount paid for public defense services in all municipal courts in 2013 was \$28,155,452.

Only 19 counties responding to the survey provided information on public defense costs, so staff consulted additional resources to bolster the available data. Each year 38 counties submit applications to OPD for public defense improvement funding available pursuant to RCW 10.101.050. These applications provide data on public defense costs, public defense appointments, and other information. Based on the information submitted by applying counties, it is estimated that statewide county misdemeanor public defense expenses in 2013 were approximately \$23,000,000.

State Funding for Public Defense: In 2005 the Washington Legislature passed legislation now codified at RCW 10.101.050-080, which makes state funds available “to counties and cities for the purpose of improving the quality of public defense services.” As specified in RCW 10.101.080, 10% of the appropriated amount is available to cities through a competitive grant process, and the remainder is allocated to counties using the formula in RCW 10.101.070 which accounts for population size and felony filings. At current funding levels, this amounts to approximately \$600,000 for cities and \$5,400,000 for counties. The county portion is used for multiple case types, not just misdemeanors. With the exception of these state funds, the cost of trial-level public defense in criminal cases is borne by the cities and counties.

In 2013, prior to mandatory caseload limits, state funds available through RCW 10.101 paid 2.1% of all municipal public defense expenses, and 4.4% of all county public defense expenses.

The city portion of state grant funding currently covers only 2.1% of municipal court public defense costs statewide. Counties provide public defense representation in many case types – misdemeanors, felonies, juvenile offender cases, civil commitments, etc. Based on information collected by OPD, the estimated total that counties pay for all public defense costs is \$123,941,336. State funding provided through Chapter 10.101 RCW accounts for 4.4% of those expenses. The overall estimated cost of public defense in both municipal and county courts is \$152,096,788. State funding provided through Chapter 10.101 RCW covers 3.9% of that amount.

The Cost of Delivering Public Defense Services:

RCW 10.101.030 enumerates the various topics local public defense standards must address, including administrative expenses and support services. Most cities and counties contract with attorneys and law firms for public defense services in misdemeanor cases. While some of these firms dedicate their practice exclusively to public defense, many combine public defense and privately retained work. In addition, many attorneys and firms contract with multiple jurisdictions for public defense work. The compensation received from these contracts, or combination of contracts, provide the funds for overhead expenses as well as attorneys’ take-home pay.

A survey administered by OPD shows that the average business expenses (not including take-home wages) for public defense attorneys in 2013 was \$43,577.

OPD surveyed contract public defense attorneys statewide to better ascertain the current level of overhead expenses. (See survey in Appendix E.) Forty-one law offices located in 19 counties responded to the survey and provided sufficient information for cost analysis. While 32 responders were solo practitioners, others were firms ranging from two to 10 attorneys.

The survey asked the contract attorneys to report their costs in four categories: malpractice insurance, non-attorney staff expenses, attorney benefits, and all other expenses. These figures do not include attorneys' take-home pay or other public defense related costs paid by a jurisdiction such as investigators, experts, and interpreters. As outlined in Table 12, below, the survey found average annual overhead costs per attorney of \$43,137.

Table 12 Survey Responses on Business Expenses (Not Including Wages) Associated with Public Defense

Description	Cost Range (Per Attorney)	Mean (Per Attorney)
Malpractice Insurance	\$400 - \$5000	\$1,656
Staff Expenses <ul style="list-style-type: none"> ♦ Compensation ♦ Benefits (insurance & retirement) ♦ L & I premiums ♦ Federal taxes 	\$0 - \$63,000	\$9,893
Attorney Benefits <ul style="list-style-type: none"> ♦ Medical Insurance ♦ Dental Insurance ♦ Retirement 	\$0 - \$23,333	\$5,016
All Other Expenses <ul style="list-style-type: none"> ♦ Office rent ♦ Utilities ♦ Telephone & Internet ♦ Electronic equipment ♦ Other equipment ♦ Office supplies ♦ Attorney self-employment taxes ♦ Attorney L & I premiums ♦ Corporation and partnership taxes ♦ Bar dues ♦ Training ♦ Mileage 	\$3,600 - \$70,000	\$26,572
Total Business Expenses	\$6,400 - \$99,600	\$43,137

V. Revenue

The House Judiciary Committee requested that the workgroup provide an inventory of public defense costs in the misdemeanor courts, and revenue generated by these courts. The Administrative Office of the Courts (AOC) maintains data on statewide criminal filings.⁷ According to AOC's Caseloads of the Courts of Washington (Caseloads Report) for 2013, all district and municipal courts listed in Appendix B reported misdemeanor criminal filings in 2013. The table in Appendix B includes four categories of data for each jurisdiction with a municipal or district Court. The chart provides the number of misdemeanors filed, the local revenue generated by the city or county from court fines and penalties, overall court expenses, and misdemeanor public defense costs.

VI. Alternative Case Resolution

The House Judiciary Committee asked that the workgroup "address best practices for alternative case resolution that may mitigate costs." The following section serves to illustrate various alternative case resolution practices currently used in Washington's trial courts. However, the listed alternative case resolution practices should not necessarily be considered *best practices*, as the workgroup did not have sufficient resources to make this determination.

Cities and counties are mitigating the increased costs associated with caseload limits by implementing practices that reduce public defense case assignments. The conventional manner of processing criminal cases requires significant investment by attorneys, judges, court staff, law enforcement, corrections and many others. Yet many misdemeanors charged each year arise from non-violent offenses and involve defendants with little or no criminal history. To protect public safety yet better economize scarce public resources, many jurisdictions are utilizing diversion programs and practices,⁸ and using prosecutorial review of police charges. Appendix C shows a listing of city and county survey responders that reported using alternative case resolution practices.

⁷ The AOC also maintains statewide data on court revenue. However, this source was not used for this report because the AOC local revenue totals reflect the combined total of the local revenue and the portion paid to the state.

⁸ Deferred prosecutions, regulated by RCW 10.05.010 are not included in this section because of (1) the narrow scope of cases to which they apply; and (2) the fact that the requirements call for active oversight by criminal defense attorneys, and therefore generally have little impact on the reduction of caseloads.

Therapeutic court cases share many characteristics with diversion programs. However, they are not categorized as diversion programs in this report because they involve intensive court system oversight and consume a large degree of court resources, while diversion program activities occur largely outside of the court.

Diversion Programs

Courts today are increasingly looking to community-based alternatives to address the root causes of criminality and target defendants whose offenses are better addressed by community intervention than criminal sanction. “A body of developing research suggests that these approaches can reduce crime, promote better victim services, and enhance public trust in the justice system.”⁹ A diversion program survey conducted by the National Association of Pretrial Services Agencies found that while few programs track recidivism data, of those that do, recidivism rates were quite low: the median recidivism rates for participants for new felonies was 5%; for new misdemeanors was 12%; and for serious traffic offenses was 1%.¹⁰

For purposes of analyzing diversion in the context of public defense representation and court resources, it is important to distinguish between “pre-file” and “post-file” diversion programs. In *pre-file* diversion programs eligible candidates are invited to participate before charges are filed in court. Upon successful completion of program requirements, no criminal charges are filed in court. This provides a unique opportunity for persons with little or no criminal history to keep a clean record. Because participation arises at this preliminary stage before charges are filed, which is before the right to counsel attaches, court expenses are avoided and jurisdictions are not required to provide public defense representation.

Pre-file diversion occurs prior to charges being filed, and prior to the right to public defense representation attaches.

In *post-file* diversion defendants are invited to participate after charges have been filed, and successful completion results in the dismissal or reduction of charges. Most courts statewide offer some type of post-file court alternative, whether by formal program, or stipulated orders of continuance. Because post-file court alternative activities occur after charges have been filed in court, indigent defendants are entitled to public defense representation throughout the duration of their participation. Therefore, even if these cases require less attorney time and fewer resources, they must be incorporated into a public defense attorney’s caseload. In jurisdictions that opt to use a case weighting system for calculating caseloads, these cases may qualify for lower case weights.¹¹

Many cities and counties utilize their probation departments to administer post-file court alternative programs. Some, however, also use them for pre-file diversion thereby reducing the number of cases filed in court. The City of Bellevue’s probation department oversees a pre-file diversion program for

⁹ Spurgeon Kennedy et al., National Association of Pretrial Services Agencies, *Promising Practices in Pretrial Diversion*, 4 (2006),

<http://www.napsa.org/diversion/library/Promising%20Practice%20in%20Pretrial%20Diversion%20-%20NAPSA%202006.pdf>

¹⁰ *Id.* at 16.

¹¹ Standard 3.6 of the Supreme Court Standards for Indigent Defense states “Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, a reduction to an infraction, stipulation on continuance, or other alternative noncriminal disposition that does not involve a finding of guilt... should be weighted as at least 1/3 of a case.”

first-time offenders arrested for shoplifting and referred by the prosecutor. Upon successful program completion, the case is not prosecuted. Similarly, the City of Yakima contracts with Yakima County for probation services, and in May 2013 they implemented a pre-file diversion program for qualifying participants. A Yakima City Prosecutor screens charges for potential diversion candidates, who typically are persons with no criminal background facing non-violent charges such as shoplifting, driving offenses, or minor in possession. They are sent a letter inviting them to participate in diversion in lieu of filing their charges in court. The participation fee is less than \$50.

At least two private agencies partner with county prosecutors to deliver formal diversion services, and the fees are paid by program participants. Friendship Diversion is a 501(c)(3) non-profit organization which has provided pre-file and post-file diversion services to Washington courts since the late 1960s. Between 1998 and 2012, Friendship Diversion collected \$3,966,988 in victim restitution, and \$534,737 in court fees.¹² Its rate of program completion demonstrates that a substantial number of cases are being handled without conventional court processing. Table 12 shows the number of successfully completed pre-file and post-file formal diversion program participants in 2011 and 2012.

Table 12 Friendship Diversion Successful Program Completions 2011 - 2012

Diversion Type	Jurisdictions	Cases Completed in 2011 and 2012	Successful Completion Rate
Pre-File	Thurston, Jefferson, Grant, Clallam	572 Misdemeanors	70.3%
Post-File	Thurston, Clallam, Jefferson	1,534 Misdemeanors and Felonies	78.4%

BounceBack, another non-profit monitoring and counseling firm, has provided pre-file diversion services to Washington prosecutors since 2001 for persons accused of unlawful issuance of a bank check, which is categorized as a felony or gross misdemeanor, depending on the check amount. BounceBack works directly with the check writer to obtain restitution for the full amount of the check and provide financial training. Successful completion of the program commonly results in charges not being filed. According to the Spokane County Prosecuting Attorney’s Office, in 2011 merchant restitution through BounceBack was \$47,462.

A drawback to privately administered diversion programs is that the clients must pay the program participation fees. These fees vary depending on location and Friendship Diversion’s pre-file diversion fees for misdemeanors range from \$300 to \$650, although payment on a sliding-fee scale may be available to qualifying participants. In light of other outstanding court fees, fines, and restitution, this additional expense creates a barrier for public defense eligible indigent clients.

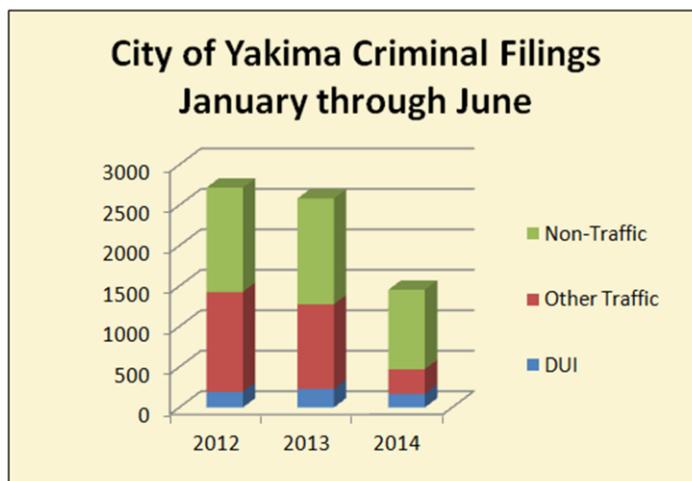
¹² http://www.friendshipdiversion.org/html/about/about_us.html

Prosecutorial Review of Charges

Many jurisdictions are transitioning from the practice of law enforcement officers directly filing misdemeanor charges in court, to instead referring the matters to prosecutors for their review. The prosecutor determines whether there is sufficient probable cause for the matter to be filed in court, what charges are appropriate, whether the matter would be better handled through a pre-file diversion or other program, and/or whether the matter should not be charged in the interests of justice. Prosecutorial review of charges takes advantage of prosecutors' legal expertise, along with their discretionary authority, and efficiently utilizes the resources triggered by filing cases in court.

Prosecutorial review of charges requires additional time of prosecuting attorneys. If prosecutorial review results in fewer criminal filings, this increased government cost can likely be offset by the reduced costs accompanying reduced court and public defense caseloads. For example, in mid-2013 the City of Yakima implemented prosecutorial review of criminal charges. Table 13 shows a comparison of Yakima Municipal Court's criminal filings for January through June of the past three years. The number of criminal filings has dropped from 2,719 to 1,456.¹³ Many of the screened-out filings were handled as pre-filing diversions instead of criminal cases.

Table 13



Regular Reduction of Certain Misdemeanors to Infractions

Another common practice that impacts public defense workloads is the routine reduction of certain qualifying misdemeanors to infractions prior to appointment of a public defender. Most jurisdictions, under qualifying circumstances, commonly reduce certain misdemeanors to infractions early in the case's process. This occurs most commonly with Driving with License Suspended in the 3rd Degree for defendants with limited criminal or driving history. The practices vary from jurisdiction to jurisdiction. When these regular reductions occur after public defense representation has begun, quick case resolutions become part of a public defense attorney's caseload, and must be counted. When they occur earlier in the process prior to the public defense appointment, however, they need not be counted. Many jurisdictions offer an "attorney of the day" where a public defense attorney is available on an arraignment calendar to provide general explanations of rights and options to persons facing infraction offers.

The described practices for alternative case resolution result in fewer cases being filed in court, and correspondingly, fewer public defense appointments. However, apart from the reduction in resources,

¹³ Caseload information obtained from the AOC Caseloads Reports.

they are designed to more quickly and effectively address the alleged criminal behavior, particularly with persons with little or no criminal history, and concentrate criminal justice system resources in appropriate cases where public safety is a concern.

V. Findings

1. The data collected for this survey reflected costs during 2013, prior to implementation of mandatory misdemeanor caseload limits, and prior to the Wilbur decision. Substantial local improvements to public defense funding and administration have occurred in 2014 and are expected to continue in 2015.
2. The state needs a comprehensive data collection mechanism to track public defense appointments and trends.
3. The fact that the workgroup had difficulty discerning significant trends is indicative of the diversity of the misdemeanor court system.
4. At the time they were asked to respond to the workgroup's survey, many cities and counties had not yet reached conclusions on how to address the 2015 misdemeanor caseload limits.
5. In 2013 state funding provided through Chapter 10.101 RCW accounted for 2.1% of statewide municipal public defense expenses, and 4.4% of county public defense expenses. This was the only state funding provided for trial level criminal public defense.
6. Cities and counties are increasingly using a variety of case resolution mechanisms, which provide varying levels of cost savings.
7. Adequately resourced full-service courts require significant general fund investment.
8. The Supreme Court's Standards for Indigent Defense and emerging litigation have caused local governments to invest greater resources in public defense, but resources are limited.
9. The majority of jurisdictions contract with attorneys and firms to represent indigent misdemeanor defendants. Furthermore, the majority of indigent misdemeanor defendants statewide are represented by private attorneys that contract with cities and counties to provide public defense services.
10. Attorneys that contract for public defense services have overhead expenses which should be accounted for in their compensation. Attorneys responding to a survey demonstrated a range of non-salary business expenses from \$6,400 - \$99,600, depending on location, staff, and rent. Their business expenses average in 2013 was \$43,577.
11. The survey of city and county administrators measured funding for public defense and did not evaluate the quality of representation. The results show that local funding levels differ. In 2013, prior to implementation of caseload limits, per case expenses (which include attorney compensation, investigators, and other related expenses) ranged from \$27.37 per case to \$1,078. The average was \$235 per case.

V. Recommendations

1. Public defense appointments should be tracked uniformly statewide and incorporated in to the design of the Judicial Information System and its successors.
2. Public defense costs should be tracked uniformly statewide using the BARS codes in the Local Government Financial Reporting System (LGFRS).
3. Because the workgroup lacked sufficient time and resources to effectively research best practices for alternative case resolutions that may mitigate public defense costs, this issue should be further studied.
4. The effects of the Supreme Court's caseload limits on public defense should continue to be monitored for purposes of evaluating the required resources, and the impact on the quality of public defense services.
5. Given the existing low level of state funding and the increased costs identified to date, the State should increase the funding levels to cities and counties for public defense.

Appendices

Appendix A	House Judiciary Committee Letter Requesting Workgroup
Appendix B	2013 Filings, Revenue, Court Costs, and Misdemeanor Public Defense Costs by Court of Limited Jurisdiction
Appendix C	Alternative Case Resolution Practices among Survey Respondents
Appendix D	City Misdemeanor Public Defense Costs Survey
Appendix E	Public Defense Attorney Non-Wage Business Expenses Survey
Appendix F	<u>Wilbur v. City of Mount Vernon</u> Summary
Appendix G	Washington Supreme Court Standards for Indigent Defense
Appendix H	Public Defense Attorney Certification Form

Appendix A – House Judiciary Committee Letter Requesting Workgroup

State of
Washington
House of
Representatives



March 13, 2014

Joanne Moore, Director
Washington State Office of Public Defense
711 Capitol Way S., Ste. 106
P.O. Box 40957
Olympia, WA 98504-0957

RE: House Judiciary Committee Request for Misdemeanor Public Defense Review

Dear Ms. Moore:

As you know, many Washington cities and counties believe they face significant new costs for public defense services, particularly with the January 2015 implementation of misdemeanor attorney caseload standards required by the Supreme Court's Standards for Indigent Defense. This past legislative session the House Judiciary Committee heard compelling testimony that local governments need new revenue authority to adequately fund public defense in the misdemeanor courts. We also heard examples of some intriguing local reforms that are expected to mitigate impacts on public defense.

The Judiciary Committee would like to be able to consider a more comprehensive statewide analysis of these issues in the 2015 legislative session. To that end, we respectfully request that the Office of Public Defense (OPD) convene an interim work group to examine the cost of misdemeanor public defense in Washington's courts of limited jurisdiction. Recognizing the short time frame involved, we recommend a relatively small core work group consisting of at least two representatives each of county and city associations, misdemeanor judges, public defenders, and prosecutors. We expect there are others who will be very interested in the topic and hope you will structure your discussions in a way that other voices will be included in the dialogue.

In addition to an inventory of current public defense costs in the misdemeanor courts and revenue generated by these courts, we would like your analysis to also address potential impacts associated with implementing the Standards for Indigent Defense, including additional costs associated with misdemeanor attorney caseload standards as well as best practices for alternative case resolution that may mitigate costs. To the extent practicable, it would be helpful to see an individualized analysis for each misdemeanor court in the state.

We welcome periodic updates on your progress and look forward to receiving a report of your findings in time for our fall Committee Assembly meeting, which is not yet scheduled but typically occurs in late November or early December.

Best regards,



Laurie Jenkins, Chair,
House Judiciary Committee



Jay Roane, Ranking Member
House Judiciary Committee

cc: Association of Washington Cities
Washington State Association of Counties
District and Municipal Judges Association
Washington Association of Prosecuting Attorneys
Washington Defender Association

Appendix B - 2013 Filings, Revenue, Court Costs, and Misdemeanor Public Defense Costs by Court of Limited Jurisdiction

The following Table provides four categories of information:

1. **Criminal Cases Filed:** This first column reflects the total number of misdemeanor criminal cases filed in each court in 2013. The statewide Judicial Information System (JIS) used by court staff to track case information does not distinguish public defense cases, which complicates efforts to determine how many of these cases were assigned to public defense counsel. However, data from the city and county surveys show that an average of 60% of misdemeanor defendants qualify for public defense services. Sixty percent of all criminal filings listed in Appendix B come to 214,487 cases that were handled by public defense attorneys in 2013.
2. **Revenue Information from Local Government Financial Reporting System (LGFRS):** The LGFRS is maintained by the Washington State Auditor's Office. Local governments submit annual financial data to the State Auditor, and categorize expenses based on Budgeting, Accounting and Reporting System (BARS) Codes. The amounts listed in the table in Appendix B are revenue from court fines and penalties. This amount is the local share and does not include the portions remitted to the State.
3. **Court Expenses:** To gain a more complete picture for each listed city and county, the expenses associated with operating a court were included. Court expenses include the expenses for court services, and do not include the cost of public defense or prosecution. The figures included in this chart are taken from the LGFRS.
4. **Public Defense Costs:** Two sources provide insight to the cost of delivering public defense services. Because each source had data from a limited number of jurisdictions, both were included in the table in Appendix B.
 - **LGFRS:** When cities and counties report costs to LGFRS, there is a designated BARS Code for Indigent Defense, with subcategories for Felony, Misdemeanor, Juvenile, and Civil Commitments. However, not all jurisdictions use the BARS codes uniformly. The table includes misdemeanor public defense costs as reported to LGFRS.
 - **Information Submitted to OPD:** OPD has two sources for information from some jurisdictions on misdemeanor public defense costs. First, the survey administered to local jurisdictions for purposes of informing this workgroup included a question on the amount spent on misdemeanor indigent defense in 2013. Additionally, many cities and most counties applied to OPD for public defense improvement funds under Chapter 10.101 RCW, and the application asks for the amount spent in 2013 on indigent defense by case type. The far right column of Appendix B includes the cost information submitted to OPD by either of these two methods.

COURT	CRIMINAL CASE FILINGS	REVENUE INFORMATION	COURT EXPENSES	PUBLIC DEFENSE EXPENSES	
	AOC Crim Case Filed 2013	2013 LGFRS Court Fines & Penalties	2013 LGFRS-Court Costs	2013 LGFRS-Indigent Defense Costs	Survey Responses or RCW 10.101 Application
Aberdeen Municipal	1643	Not available	Not available	Not available	No information
Adams District (both Othello & Ritzville District Courts)	655	\$717,664	\$235,509	Only general indigent defense, District Court not separated	Only general indigent defense, District Court not separated
Airway Heights Municipal	532	\$50,077	\$268,943	\$48,000	\$49,050
Algona Municipal	(incl Pacific Municipal)	\$68,517	\$72,338	Not available	Not available
Anacortes Municipal	643	\$200,232	\$256,887	\$64,597	\$64,597
Arlington Municipal	(incl in Snohomish Co)	\$198,653	Not available	Not available	\$94,958
Asotin District	422	\$114,124	\$301,441	Not available	\$40,000
Asotin Municipal	59	Not available	\$10,031	Not available	\$38,004
Auburn Municipal	2729	\$1,368,150	\$620,637	Not available	\$390,000
Bainbridge Island Municipal	167	\$133,667	\$557,335	\$54,131	\$51,500
Battle Ground Municipal	683	\$258,874	\$389,122	Not available	\$65,717
Bellevue Municipal	1896	\$1,193,213	Not available	Not available	\$688,062
Bellingham Municipal	3606	\$1,662,553	\$1,493,270	\$2,152,386	\$756,000
Benton District	2866	\$2,489,725	\$3,787,032	Only general indigent defense, District Court not separated	\$940,000.00
Bingen Municipal	43	\$15,360	\$13,312	\$6,959	Not available
Black Diamond Municipal	304	\$104,826	\$129,851	\$22,050	Not available
Blaine Municipal	382	\$223,729	\$202,402	\$18,685	\$18,685
Bonney Lake Municipal	1073	\$543,544	\$529,258	Not available	\$75,000
Bothell Municipal	871	\$363,907	\$489,770	Not available	Not available
Bremerton Municipal	1777	\$1,181,720	\$991,272	\$275,000	\$298,386
Bridgeport Municipal	165	Not available	Not available	Not available	Not available
Brier Municipal	137	\$69,338	\$33,878	\$28,060	\$28,060
Buckley Municipal	237	\$144,141	\$171,521	Not available	\$33,800
Burien Municipal	886	\$98,861	\$262,312	\$128,221	\$117,000
Burlington Municipal	685	\$120,763	\$519,850	Not available	\$320,000
Camas Municipal	543	\$237,966	\$240,894	Not available	\$40,800
Carnation Municipal	66	Not available	\$17,919	Not available	Not available
Castle Rock Municipal	72	\$28,374	\$11,286	\$21,040	Not available
Centralia Municipal	929	\$248,108	\$392,635	Not available	Not available

COURT	CRIMINAL CASE FILINGS	REVENUE INFORMATION	COURT EXPENSES	PUBLIC DEFENSE EXPENSES	
	AOC Crim Case Filed 2013	2013 LGFRS Court Fines & Penalties	2013 LGFRS-Court Costs	2013 LGFRS-Indigent Defense Costs	Survey Responses or RCW 10.101 Application
Chehalis Municipal	456	\$140,826	\$230,738	\$41,375	\$42,125
Chelan District	1662	\$1,003,137	\$1,160,082	Not available	Only general indigent defense, District Court not separated
Cheney Municipal	302	\$168,987	\$269,083	Not available	\$54,900
Chewelah Municipal	107	\$21,436	\$31,830	\$18,853	Not available
Clallam District (both Clallam 1 and Clallam 3 District Courts)	1033	\$597,303	1,122,202	Only general indigent defense, District Court not separated	Only general indigent defense, District Court not separated
Clark District	5454	\$3,007,405	4,529,066	\$882,804	\$882,732
Clarkston Municipal	526	\$130,064	\$30,120	\$39,962	\$40,000
Cle Elum Municipal	98	\$48,374	\$54,460	\$25,110	Not available
Clyde Hill Municipal	65	\$57,977	Not available	Not available	5200
Colfax Municipal	67	\$26,614	\$83,387	Not available	Not available
College Place Municipal (CPL)	271	\$93,901	\$81,378	Not available	Not available
Columbia District	61	\$52,865	\$234,776	Not available	Only general indigent defense, District Court not separated
Colville Municipal	211	\$25,242	\$41,121	\$54,052	Not available
Connell Municipal	76	\$34,076	\$19,531	\$4,813	Not available
Cosmopolis Municipal	79	\$37,098	\$31,928	Not available	Not available
Coupeville Municipal	23	\$11,780	\$41,256	Not available	Not available
Covington Municipal	331	\$115,595	\$157,703	\$49,623	Not available
Cowlitz District	1422				
Cusick Municipal	1	\$766	\$800	Not available	Not available
Darrington Municipal	23	\$3,682	Not available	\$7,837	Not available
Dayton Municipal	47	\$47,295	\$103,513	Not available	Not available
Deer Park Municipal	82	\$17,506	\$86,977	Not available	Not available
Des Moines Municipal	1040	\$983,480	\$847,596	\$117,100	\$124,300
Douglas District	622	\$548,098	\$889,556	Not available	Not available
Dupont Municipal	97	Not available	\$133,636	Not available	Not available
Duvall Municipal	110	\$51,939	\$71,368	\$21,945	Not available
E Wenatchee Municipal	564	\$286,187	\$340,847	Not available	\$100,967
Eatonville (ETN) Municipal	84	\$38,033	\$37,137	Not available	Not available
Edmonds Municipal	1291	\$639,770	\$731,516	Not available	Not available
Electric City Municipal	1	\$1,740	\$1,200	Not available	Not available
Elma Municipal	201	\$36,361	\$99,543	Not available	Not available
Enumclaw Municipal	402	\$166,485	\$307,717	\$43,600	\$44,000
Everett Municipal	5231	\$1,724,840	\$1,812,605	Not available	\$1,068,057
Everson Nooksack Municipal	182	\$75,433	76,729	14,190	Not available

COURT	CRIMINAL CASE FILINGS	REVENUE INFORMATION	COURT EXPENSES	PUBLIC DEFENSE EXPENSES	
	AOC Crim Case Filed 2013	2013 LGFRS Court Fines & Penalties	2013 LGFRS-Court Costs	2013 LGFRS-Indigent Defense Costs	Survey Responses or RCW 10.101 Application
Federal Way Municipal	3375	\$3,865,623	\$1,406,968	\$453,105	Not available
Ferndale Municipal	786	\$161,132	\$347,987	Not available	Not available
Ferry District	125	\$63,419	\$218,157	Not available	Not available
Fife Municipal	1727	\$2,916,173	\$1,020,023	\$123,090	Not available
Fircrest Municipal	376	\$222,212	\$233,100	Not available	\$27,600
Forks Municipal	202	\$45,156	\$59,051	Not available	Not available
Franklin District	881	\$841,406	\$962,525	Not available	\$117,258
Garfield District	125	\$782	\$281,847	Not available	\$5,219
Gig Harbor Municipal	355	\$114,949	\$354,713	Not available	54557
Goldbar Municipal	21	\$4,720	\$2,868	\$2,840	Not available
Goldendale Municipal	181	\$36,409	\$112,396	Not available	\$25,000
Grand Coulee Municipal	1	Not available	Not available	Not available	Not available
Grandview Municipal	512	\$210,307	\$260,363	Not available	\$71,000
Granger Municipal	108	\$29,144	\$114,922	Not available	Not available
Granite Falls Municipal	30	\$23,558	\$9,241	\$6,848	Not available
Grant District	4143	\$1,663,473	\$2,239,092	Not available	\$612,169
Grays Harbor District (Both Dept. 1 and Dept. 2)	1607	\$976,664	\$1,058,647	Not available	\$186,306
Hoquiam Municipal	624	\$128,864	\$169,078	\$37,785	Not available
Hunts Point	5	\$5,332	\$2,755	\$725	Not available
Ilwaco Municipal	29	\$5,749	\$21,517	Not available	Not available
Ione Municipal	14	\$2,026	\$2,200	Not available	Not available
Island District	905	\$496,076	\$896,967	Not available	Not available
Issaquah Municipal	1063	\$635,405	\$793,446	Not available	\$121,409
Jefferson District	762	\$369,951	\$552,651	Not available	Not available
Kalama Municipal	113	\$27,103	\$22,551	\$16,602	\$16,200
Kelso Municipal	615	\$125,303	\$170,196	\$27,500	\$90,055
Kenmore Municipal	356	\$192,314	\$256,548	\$94,003	Not available
Kennewick Municipal	3174	\$1,266,498	\$1,329,963	Not available	\$325,820
Kent Municipal	4526	\$1,515,693	\$3,375,975	Not available	Not available
Kettle Falls Municipal	73	\$14,210	\$27,209	Not available	Not available
King District	11625	\$6,261,607	\$29,740,605	\$2,329,893	\$6,308,574
Kirkland Municipal	2357	\$1,958,658	\$2,130,296	Not available	Not available
Kitsap District	4344	\$2,263,648	\$2,553,796	Not available	\$647,739
Kittitas District (Both Lower Kittitas District and Upper Kittitas District)	2,236	\$1,396,176	\$447,009	Not available	\$291,420
Klickitat District (Both E. Klickitat and W. Klickitat District)	544	\$253,774	\$604,192	Not available	Not available
La Center Municipal	96	\$47,482	Not available	Not available	Not available

COURT	CRIMINAL CASE FILINGS	REVENUE INFORMATION	COURT EXPENSES	PUBLIC DEFENSE EXPENSES	
	AOC Crim Case Filed 2013	2013 LGFRS Court Fines & Penalties	2013 LGFRS-Court Costs	2013 LGFRS-Indigent Defense Costs	Survey Responses or RCW 10.101 Application
Lacey Municipal	1881	\$731,115	\$400,000	\$147,977	Not available
Lake Forest Pk Municipal	308	\$821,270	\$355,782	\$85,076	\$86,445
Lakewood Municipal	4179	\$1,734,326	\$1,320,865	Not available	\$163,032
Langley Municipal	3	\$5,760	\$23,487	Not available	Not available
Lewis District	1495	\$1,515,521	\$1,580,382	\$342,420	\$342,420
Liberty Lake Municipal	472	\$54,947	\$204,553	Not available	Not available
Lincoln District	509	\$304,172	\$308,544	Not available	\$42,189
Long Beach Municipal	75	\$7,213	\$81,452	Not available	Not available
Longview Municipal	2368	\$944,836	\$621,339	Not available	\$245,047
Lynden Municipal	498	\$219,089	\$209,862	\$27,580	Not available
Lynnwood Municipal	2747	\$4,347,790	\$1,054,756	Not available	Not available
Maple Valley Municipal	189	\$91,199	\$351,175	Not available	Not available
Marysville Municipal	3510	\$522,250	\$1,315,036	Not available	\$250,000
Mason District	1381	\$669,161	\$801,737	\$170,096	\$233,537
McCleary Municipal	65	\$34,132	\$49,298	\$6,000	Not available
Medical Lake Municipal	79	\$15,408	\$105,022	Not available	Not available
Medina Municipal	38	\$44,458	\$69,055	Not available	Not available
Mercer Island Municipal	263	\$301,873	\$354,740	Not available	\$26,990
Metaline Municipal	3	Not available	\$2,958	Not available	Not available
Metaline Falls Municipal	9	Not available	\$300	Not available	Not available
Mill Creek Municipal	430	\$197,634	Not available	\$86,675	Not available
Milton Municipal	552	\$102,930	\$246,932	Not available	Not available
Monroe Municipal	579	\$802,049	\$99,999	\$47,188	\$47,188
Montesano Municipal	140	\$64,772	\$108,150	Not available	\$18,400
Morton Municipal	61	Not available	Not available	Not available	Not available
Mossyrock Municipal	8	\$13,402	\$1,030	\$2,040	Not available
Mount Vernon Municipal	1045	\$237,443	\$331,840	\$232,619	Not available
Mountlake Terrace M	1004	\$387,684	\$735,191	Not available	Not available
Mukilteo Municipal	306	\$146,945	Not available	\$38,498	Not available
N. Bonneville Municipal	25	\$9,467	\$26,844	Not available	Not available
Napavine Municipal	77	\$25,659	\$95,159	\$13,950	Not available
Newcastle Municipal	49	\$578	Not available	\$15,600	Not available
Newport Municipal	169	\$24,005	\$66,175	Not available	Not available
Normandy Park Municipal	157	\$308	\$40,449	\$23,217	Not available
Oak Harbor Municipal	615	\$139,904	\$326,761	Not available	Not available
Oakville Municipal	22	\$6,940	\$14,484	\$5,500	Not available
Ocean Shores Municipal	273	\$82,274	\$198,883	Not available	Not available

COURT	CRIMINAL CASE FILINGS	REVENUE INFORMATION	COURT EXPENSES	PUBLIC DEFENSE EXPENSES	
	AOC Crim Case Filed 2013	2013 LGFRS Court Fines & Penalties	2013 LGFRS-Court Costs	2013 LGFRS-Indigent Defense Costs	Survey Responses or RCW 10.101 Application
Okanogan District	2005	\$599,454	\$731,866	Not available	Not available
Okanogan Municipal	3	\$13,968	\$4,965	Not available	Not available
Olympia Municipal	1799	\$846,993	\$1,506,716	\$144,000	\$144,000
Orting Municipal	220	\$73,438	\$147,917	Not available	\$20,000
Othello Municipal	317	Not available	\$75,000	Not available	Not available
Pacific District (both N. Pacific and S. Pacific)	767	\$456,433	\$534,609	Not available	Not available
Pacific Municipal	433	\$119,924	\$228,814	\$32,375	\$32,295
Pasco Municipal	2381	\$895,307	\$878,249	\$124,277	\$196,000
Pe Ell Municipal	9	\$4,994	Not available	Not available	Not available
Pend Oreille District	346	\$110,038	\$404,425	Not available	\$96,273
Pierce District (consolidated all Pierce District)	11489	\$4,471,644	\$8,105,915	\$3,316,541	\$3,316,541
Port Angeles Municipal	855	Not available	Not available	Not available	\$103,915
Port Orchard Municipal	964	\$267,251	\$479,490	\$94,664	\$89,464
Port Townsend Municipal	218	\$75,170	Not available	Not available	Not available
Poulsbo Municipal	369	\$76,730	\$355,656	Not available	Not available
Prosser Municipal	235	\$93,364	\$91,745	Not available	Not available
Puyallup Municipal	3416	\$2,906,178	\$1,275,703	\$155,571	\$155,571
Rainier Municipal	28	Not available	Not available	Not available	Not available
Raymond Municipal	238	\$36,099	\$110,668	Not available	Not available
Rearadan Municipal	1	\$15,701	Not available	Not available	Not available
Redmond Municipal	908	\$810,621	\$518,550	\$339,453	Not available
Renton Municipal	2677	\$2,739,626	\$2,364,631	Not available	Not available
Republic Municipal	64	\$30,902	Not available	Not available	Not available
Richland Municipal	2132	\$809,492	\$618,486	Not available	\$204,378
Ridgefield Municipal	192	\$89,246	\$138,151	Not available	Not available
Ritzville Municipal	44	\$21,963	Not available	\$24,086	Not available
Rock Island	2	Not available	\$300	Not available	Not available
Roslyn Municipal	27	\$8,903	\$16,271	\$6,035	Not available
Roy Municipal	51	\$44,236	\$54,243	\$3,100	Not available
Ruston Municipal	146	Not available	Not available	Not available	Not available
S. Prairie (SHP) Municipal	1	\$5,215	\$2,562	Not available	Not available
Sammamish Municipal	236	\$162,322	\$262,452	\$46,782	Not available
San Juan District	242	\$72,020	\$452,868	Not available	Not available
SeaTac Municipal	969	\$578,085	\$705,341	\$196,422	\$196,422
Seattle Municipal	9729	\$38,978,888	\$27,636,174	\$5,667,807	\$5,668,000
Sedro Woolley Municipal	340	\$82,713	\$95,138	\$38,850	Not available
Selah Municipal	468	\$92,539	\$110,523	Not available	\$39,429
Sequim Municipal	402	\$68,249	\$114,136	\$57,569	\$57,569

COURT	CRIMINAL CASE FILINGS	REVENUE INFORMATION	COURT EXPENSES	PUBLIC DEFENSE EXPENSES	
	AOC Crim Case Filed 2013	2013 LGFRS Court Fines & Penalties	2013 LGFRS-Court Costs	2013 LGFRS-Indigent Defense Costs	Survey Responses or RCW 10.101 Application
Shelton Municipal	721	\$1,173,469	\$347,425	Not available	\$84,000
Shoreline Municipal	966	\$441,357	\$603,563	\$224,003	Not available
Skagit District	3531	\$1,779,324	\$1,917,530	Not available	\$247,681
Skamania District	376	\$191,076	\$425,900	Not available	Not available
Snohomish District (Includes Cascade District, Everett District, Evergreen District, S. Snohomish District)	129160	\$6,694,186	\$6,436,723	\$974,451	\$1,007,513
Snohomish Municipal	220	\$94,123	\$237,553	Not available	Not available
South Bend Municipal	121	\$101,312	\$50,560	Not available	Not available
Spokane District	6308	\$2,687,395	\$4,423,654	\$1,337,467	\$2,158,292
Spokane Municipal	8385	\$4,467,942	\$6,250,352	Not available	\$2,695,710
Spokane Valley Municipal	2503	\$543,662	Not available	Not available	\$649,831
Springdale Municipal	8	\$8,157	\$4,071	\$3,288	Not available
Stanwood Municipal	58	29,343	\$13,890	\$8,640	Not available
Steilacoom (TST) Municipal	179	Not available	Not available	Not available	Not available
Stevens District	863	\$288,641	\$564,588	Not available	\$114,384
Stevenson Municipal	54	\$13,466	\$42,589	\$10,572	Not available
Sultan Municipal	41	\$16,778	\$5,756	Not available	Not available
Sumas Municipal	241	\$65,784	\$119,856	Not available	\$17,500
Sumner Municipal	563	\$232,181	\$323,318	\$28,800	Not available
Sunnyside Municipal	1958	Not available	Not available	Not available	\$178,845
Tacoma Municipal	5212	\$4,697,241	\$3,847,549	Not available	\$1,581,480
Tenino Municipal	76	\$30,993	\$52,904	Not available	Not available
Thurston District	2884	\$1,572,776	\$3,222,688	Not available	\$664,940
Tieton Municipal	1	\$14,689	\$4,180	Not available	Not available
Toledo Municipal	21	\$9,699	Not available	\$5,160	Not available
Toppenish Municipal	814	\$207,056	\$271,648	Not available	Not available
Tukwila Municipal	1967	\$236,988	\$905,817	Not available	\$212,725
Tumwater (THD) Municipal	1125	Not available	Not available	Not available	Not available
Union Gap Municipal (UGM)	1017	\$369,156	\$404,520	Not available	\$78,490
Vader Municipal	8	\$3,996	\$10,262	\$2,610	Not available
Vancouver Municipal	4691	\$1,785,348	\$1,015,461	Not available	\$665,972
W. Richland Municipal	167	\$119,221	\$96,341	Not available	Not available
Wahkiakum District	141	\$129,111	\$260,292	Not available	\$29,312
Walla Walla District	1545	\$292,879	\$771,013	Not available	Not available
Wapato Municipal	554	\$74,994	\$145,550	\$40,775	\$43,000
Washougal Municipal	384	Not available	\$155,487	Not available	Not available
Wenatchee Municipal	1403	\$1,020,410	\$671,186	Not available	Not available
Westport Municipal	120	\$20,876	\$129,517	\$2,050	\$9,395
Whatcom District	3107	\$1,732,145	\$3,354,961	Not available	\$907,955

COURT	CRIMINAL CASE FILINGS	REVENUE INFORMATION	COURT EXPENSES	PUBLIC DEFENSE EXPENSES	
	AOC Crim Case Filed 2013	2013 LGFRS Court Fines & Penalties	2013 LGFRS-Court Costs	2013 LGFRS-Indigent Defense Costs	Survey Responses or RCW 10.101 Application
White Salmon Municipal	65	\$18,199	\$16,353	\$11,729	\$4,662
Whitman District	1331	\$836,621	\$1,052,091	Not available	Not available
Wilbur Municipal	1	\$5,998	Not available	Not available	Not available
Wilkeson Municipal	16	\$13,815	\$17,385	Not available	Not available
Winlock Municipal	38	\$19,020	\$48,671	Not available	Not available
Woodinville Municipal	191	\$1,330	\$59,031	\$26,339	Not available
Woodland Municipal	315	\$71,768	\$49,313	\$59,128	Not available
Woodway Municipal	9	\$12,400	\$4,943	Not available	Not available
Yakima District	4343	\$1,933,036	\$3,200,669	\$1,310,034	\$767,125
Yakima Municipal	4274	\$1,603,067	\$1,330,831	\$541,656	\$622,537
Yarrow Point Municipal	7	\$7,900	\$5,732	Not available	Not available
Yelm Municipal	660	\$104,274	\$205,451	Not available	\$10,400
Zillah Municipal	120	\$28,166	\$80,225	\$10,850	Not available

Appendix C – Alternative Case Resolution Practices among Survey Responders

Jurisdiction	Pre-File Re-licensing Program	Post-File Relicensing Program	Pre-File Diversion	Reduce to Infractions before Public Defense Appointment	Prosecutorial Review of Charges Before Filing in Court	Other
CITIES						
Anonymous City - 1				X	X	
Anonymous City - 7				X		
Anonymous City - 10	X	X	X	X	X	Approx. 25% of charges are reviewed by prosecutors for a charging decision
Anonymous - 11		X				
Anonymous - 12	X	X	X	X	X	
Anonymous - 13					X	
Anonymous - 15		X	X	X	X	
Anonymous 17					X	
Anonymous - 19	X	X	X	X	X	
Arlington						Currently reviewing all options to address caseloads.
Auburn				X	X	
Bellingham			X			
Gig Harbor		X		X		
Kalama, WA	X	X		X		
Marysville			X		X	
Port Angeles	X		X			
Port Orchard		X			X	
Seattle		X	X	X	X	
Shelton				X	X	
Shoreline					X	
Spokane	X	X	X		X	Weekly community court for low-level quality-of-life crimes committed in the downtown core.
Spokane Valley		X				
Sunnyside	X	X	X	X	X	
Tacoma		X		X	X	

Jurisdiction	Pre-File Re-licensing Program	Post-File Relicensing Program	Pre-File Diversion	Reduce to Infractions before Public Defense Appointment	Prosecutorial Review of Charges Before Filing in Court	Other
Tukwila	X	X		X		
Vancouver		X				
Wapato	X		X	X		
Yelm		X		X		
COUNTIES						
Anonymous County - 2		X				
Anonymous County - 4		X		X	X	
Asotin			X	X		
Benton				X		
Clallam			X	X	X	
Clark		X			X	PA review of charges before filing in court only in domestic violence cases
Ferry					X	
Grays Harbor			X			
King County	X	X	X	X	X	
Lewis		X				
Pend Oreille		X		X		
Pierce			X		X	
San Juan		X		X	X	
Snohomish			X		X	
Spokane		X				We plan on encouraging the Board of County Commissioners to adopt these practices.
Stevens				X	X	
Thurston	X				X	Not all cases are reviewed by prosecutors before filing.
Whitman			X	X	X	
Yakima				X	X	

Appendix D – City Misdemeanor Public Defense Costs Survey

Municipal Public Defense Survey for the House Judiciary Committee

Thank you for taking this survey

Beginning in 2015, the Standards for Indigent Defense establish that public defense attorneys should limit their misdemeanor caseloads to 400 cases per year, or 300 "case weights" per year. The Washington House Judiciary Committee has requested the Office of Public Defense (OPD) to convene a work group to research the cost of public defense and how the new caseload standards may financially impact courts of limited jurisdiction.

The Work Group (consisting of judges, prosecutors, public defense attorneys, city representatives and county representatives) has designed the following survey to gather public defense data from every court of limited jurisdiction. Your answers to this survey will be instrumental in reaching a more comprehensive understanding of misdemeanor public defense costs. Unless you chose to provide identifying information, your responses to this survey will be anonymous.

If you do not have all of the information available to answer the questions on this survey, you may save the survey and return to it at a later time. If you cannot answer all the questions, please still provide us as much information as you have available. All answers will be helpful.

Please complete this survey by JULY 18. If you have questions about the survey, or need additional time to complete it, please contact OPD staff: Katrin.Johnson@opd.wa.gov, 360-586-3164 ext. 108; or Kathy.Kuriyama@opd.wa.gov, 360-586-3164 ext. 114.

General Information

1. City (optional):

2. City Population:

- 0 - 5,000
- 5,000 - 15,000
- 15,000 - 30,000
- 30,000 - 50,000
- 50,000 - 75,000
- 75,000 - 125,000
- 125,000 - 200,000
- 200,000 or higher

3. Would you categorize your city as:

- Rural
- Suburban
- Urban

Municipal Public Defense Survey for the House Judiciary Committee

4. Name, email & phone number of person(s) to contact for further clarification on survey answers (optional):

5. How are public defense services arranged in your city? (Check all that apply.)

- Contract with attorneys, law firm(s), and/or non-profit agency
- Contract with another city or county
- The court appoints from a list of private attorneys
- Other (please specify)

Public Defense Expenses

6. What was the approximate total cost for PUBLIC DEFENSE SERVICES in your city in 2013? (This would include, for example, attorney compensation, investigators, experts, etc.)

7. The Supreme Court Standards for Indigent Defense state that a full-time caseload consists of being appointed to, in one calendar year:

**150 felonies or
400 misdemeanors (or 300 misdemeanor case weights) or
250 juvenile offender cases or
250 civil comment cases in a calendar year,
or having 80 open dependency cases.**

If any attorney has a mixture of case types, these standards should be applied proportionately to determine a full caseload.

Do you estimate that there might be any changes in your jurisdiction's public defense expenses in 2015 as a result of attorneys adhering to the caseload limits?

- Yes
- Maybe
- No

Estimated Changes in Expenses

8. What changes in expenses do you estimate, and why? (We understand that most jurisdictions are still calculating these figures. Please provide your best estimate.)

Filings and Public Defense Representation

9. Total number of new misdemeanor cases filed in 2013:

10. Approximate number of new misdemeanor cases assigned to public defense attorneys in 2013:

11. When public defense attorneys are assigned to misdemeanor cases, do they continue representation throughout the client's probationary period as well?

- Yes
- No, representation ends at or shortly after sentencing.
- I don't know.

Other (please specify)

12. In your city, do public defense attorneys appear at preliminary appearance calendars?

- Yes, in-custody only
- Yes, out-of-custody only
- Yes, both in and out-of-custody
- No

Other (please specify)

13. In your city, do public defense attorneys appear at arraignment hearings?

- Yes, in-custody only
- Yes, out-of-custody only
- Yes, both in and out-of-custody
- No

Other (please specify)

Resolution of Misdemeanor Charges

14. Is your city using, or will it use any of the following practices for resolution of misdemeanor charges? (Check all that apply.)

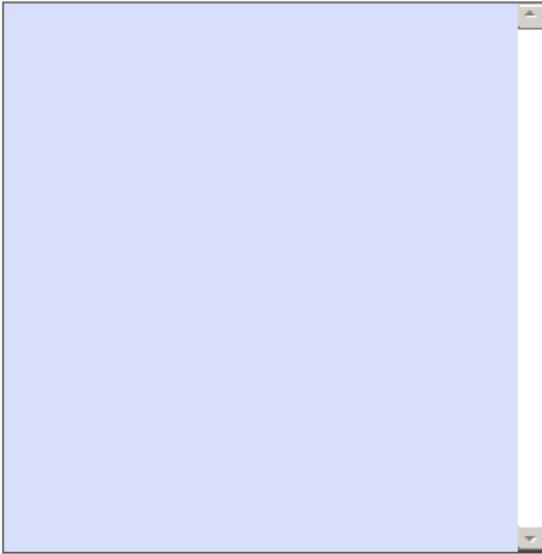
- Releensing program before misdemeanor charges are filed in court.
- Releensing program after misdemeanor charges are filed in court.
- Diversion of certain offenses before charges are filed in court, or before the defendants are screened for public defense representation.
- Diversion or Stipulated Orders of Continuance after the charges have been filed and counsel is appointed.
- Regular reduction of certain misdemeanors to infractions before the defendants are screened for public defense representation.
- Prosecutorial review of charges before filing in court.
- Other (please specify)

15. Do you anticipate a reduction in misdemeanor cases assigned to public defense attorneys in 2014 or 2015?

- Yes
- Maybe
- No

Estimated Reduction

16. How much of a reduction do you estimate? Please describe the changes you expect to see.



Funding for Public Defense

17. Are there local plans for making changes to public defense funding in 2015?

- Yes
- I'm not sure
- No

Funding for Public Defense

18. What funding changes are anticipated for public defense in 2015?



Recruiting/Retaining Services

19. Does your city have any difficulties recruiting and/or retaining public defense services?

- Yes
- I'm not sure
- No

Other (please specify)

Recruiting/Retaining Services

20. What are the reasons for those difficulties in recruiting/retaining public defense services?

21. Is there any other information you would like to share about misdemeanor public defense services in your city and the forthcoming caseload limits?

Thank You

Thank you for taking time to participate in this survey. You are welcome to come back to the survey by July 18, 2014, in case you need to modify any answers.

If you have any questions, please contact Kathy.Kuriyama@opd.wa.gov, 360-586-3164 ext. 114; or Katrin.Johnson@opd.wa.gov, 360-586-3164 ext. 108.

The Cost of Doing Business as a Contract Public Defense Attorney

The Purpose of this Survey

Recent developments in public defense - namely, the Supreme Court's caseload limits and the Wilbur decision from the U.S. District Court - have prompted many local governments to re-examine their public defense services. One primary area they are trying to address is attorney compensation, which includes wages and overhead expenses.

A workgroup of multiple stakeholders has been convened at the request of the House Judiciary Committee to look into these issues. An important part to this research is knowing how much it costs to run a law office that delivers public defense services.

This anonymous survey is intended specifically for attorneys who contracted for public defense services in 2013. This survey is not intended for attorneys who are employed at County/City public defense agencies. However, private attorneys who contract with such agencies (e.g. conflict cases) are highly encouraged to participate in this survey.

Please take a few minutes to provide your best estimates to these questions. The data collected from this survey will be extremely helpful in explaining to the Legislature and local governments that contract amounts aren't solely wages.

* 1. In 2013 were you employed as a staff attorney at a city or county public defense agency?

(For this question, the term "agency" would also include non-profit public defense agencies such as those in Clallam, King, Snohomish, and Chelan counties.)

- Yes - I was employed as a staff attorney at a county or city agency all year.
- No - I was not employed as a staff attorney at a county or city agency
- I was only employed as a staff attorney at a county or city agency for part of the year.

2. In which county is your law firm located?

The Cost of Doing Business as a Contract Public Defense Attorney

3. Approximately how many public defense cases did your firm handle in 2013?

Misdemeanors	<input type="text"/>
Felonies	<input type="text"/>
Juvenile Offender Cases	<input type="text"/>
Dependencies	<input type="text"/>
SVP	<input type="text"/>
Contempt	<input type="text"/>
Commitments	<input type="text"/>
Other	<input type="text"/>

4. How many FTE attorneys were in your firm in 2013?

("FTE" refers to full-time equivalent. Two attorneys working half-time would equal one FTE.)

5. In 2013, how many FTE attorneys in your firm worked exclusively on public defense?

6. In 2013, approximately how much did your firm gross for public defense work?

7. In 2013, approximately what was your attorneys' total take-home pay for public defense work? (If your firm had more than one attorney, this would be the cumulative amount of all attorneys' take-home pay.)

The Cost of Doing Business as a Contract Public Defense Attorney

8. In 2013, approximately how much did your firm pay in the following categories? These expenses apply to all firm activities, not just public defense.

Medical and Retirement Benefits for All Attorneys:	<input type="text"/>
Malpractice Insurance for All Attorneys:	<input type="text"/>
Non-Attorney Staff Salaries, Taxes & Benefits:	<input type="text"/>
All Other Expenses (rent, utilities, phone, equipment, attorney taxes, attorney L & I, business taxes, bar dues, training, travel, etc.)	<input type="text"/>

9. Please type any other comments or information you'd like to share regarding public defense compensation and overhead expenses:

Thank You

Thank you for taking time to complete these survey. If you have any follow-up questions, please contact Katrin.Johnson@opd.wa.gov or Kathy.Kuriyama@opd.wa.gov.

Thank You

Thank you for taking time to answer this survey, but it is specifically intended for attorneys in for-profit private firms that contracted for public defense services.

However, we still appreciate your insight. If you'd like to share other thoughts on public defense costs and compensation, please enter them below:

Appendix F – *Wilbur v. City of Mount Vernon* Summary

In December of 2013, U.S. District Court Judge Robert Lasnik found that the public defense system of the Skagit County cities of Mount Vernon and Burlington deprived indigent persons who face misdemeanor criminal charges of their fundamental right to assistance of counsel.

Filed in 2011, the class action suit (*Wilbur v. City of Mount Vernon*) challenged the cities' public defense system for systematically failing to provide meaningful assistance of counsel as required by the U.S. and Washington constitutions.¹⁴ A two-week trial in the case was held in June 2013, with additional briefing submitted in August.

The suit asserted that:

- **The cities knew the public defense attorneys' caseloads were excessive for many years.** At the time of filing the suit, the cities knew that part-time public defenders were handling thousands of cases per year
- **The public defense attorneys failed to reasonably investigate the charges filed against their clients.** During an eight month period in 2012, they utilized an investigator only four times.
- **The public defense attorneys failed to spend sufficient time on their clients' cases, effectively forcing defendants to accept plea deals.** Prior to the suit, the public defenders routinely spent less than 30 minutes on a case.
- **The cities failed to provide any meaningful oversight of the public defense system.** The cities argued they had no obligation to monitor or supervise the contract system.

Judge Lasnik found that the system was broken to such an extent that "the individual defendant is not represented in any meaningful way, and actual innocence could conceivably go unnoticed and unchampioned." In its ruling, the court found that the cities' public defenders had excessively high caseloads, rarely provided an opportunity for the accused to confer with them in a confidential setting, rarely engaged in investigations or researched possible legal defenses, and overall failed to meaningfully represent their clients. Further, it found that city officials made deliberate choices that directly led to the deprivation of rights and failed to monitor or evaluate the system, turning a blind eye to its obvious problems.

The court concluded that the defense services for indigent clients amounted to little more than a "meet and plead" system. As Judge Lasnik wrote, "The appointment of counsel was, for the most part, little more than a formality, a stepping stone on the way to a case closure or plea bargain having almost nothing to do with the individual indigent defendant." The court required the cities to hire a supervisor to ensure their defense system complies with constitutional standards, and the court kept jurisdiction over the case for three years while reforms proceed.

The *Wilbur* decision was cited extensively by the U.S. Department of Justice in a Statement of Interest filed in the recently settled New York State case, *Hurrell-Harring v State of New York*, 15 N.Y.3d 8 (2010).

¹⁴ The suit was pursued by ACLU-WA staff attorneys, cooperating attorneys of Perkins Coie LLP; of Terrell Marshall Daudt & Willie PLLC; and of The Scott Law Group, PS.

Indigent defendants in five New York counties filed suit alleging a claim similar to the claim in *Wilbur*, that the indigent defense systems in their counties have functioned to deprive them and other similarly situated indigent defendants of constitutionally and statutorily guaranteed representational rights. The case recently settled with the State of New York agreeing to pay over \$3.5 million for improvements to the indigent defense systems in those five counties and over \$5 million in attorney's fees. The changes agreed to by the State are similar to those ordered by Judge Lasnik in *Wilbur*.

Judge Lasnik ordered the defendant cities of Mount Vernon and Burlington to enhance their defense services to indigent defendants appearing in the municipal courts. The cities cannot assume the delivery of effective representation of their contracted attorneys. The cities must insure that their courts are meeting minimum standards of legal representation. The court highlighted the following areas as necessary for providing effective representation to indigent defendants:

1. Access to counsel – Counsel is provided for all indigent defendants at every stage of the criminal proceeding. Access to counsel includes the provision of resources necessary to investigate and try a case.
 - a. Investigative services
 - b. Expert funding
2. Confidentiality – Private meeting space should be provided at or near courthouse for attorney-client communication. Attorneys must have an office or private meeting space to go over case options with defendant.
3. Documentation – Cities must monitor the level of compliance of contract attorneys with the Indigent Defense Standards as well as:
 - a. Number of cases assigned to attorney
 - b. Number of pretrial motions filed by attorney
 - c. Number of cases tried
 - d. Qualifications to try cases
 - e. Training hours
 - f. Time spent with client
4. Complaint process – Cities required to develop a procedure and demand contract attorneys to also have a complaint procedure to handle grievances made by defendants.

Appendix G – Washington Supreme Court Standards for Indigent Defense

Preamble

The Washington Supreme Court adopts the following Standards to address certain basic elements of public defense practice related to the effective assistance of counsel. The Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/CrRLJ 3.1/JuCR 9.2 references specific “Applicable Standards.” The Court adopts additional Standards beyond those required for certification as guidance for public defense attorneys in addressing issues identified in *State v. A.N.J.*, 168 Wash.2d 91 (2010), including the suitability of contracts that public defense attorneys may negotiate and sign. To the extent that certain Standards may refer to or be interpreted as referring to local governments, the Court recognizes the authority of its Rules is limited to attorneys and the courts. Local courts and clerks are encouraged to develop protocols for procedures for receiving and retaining Certifications.

Standard 1. Compensation

[Reserved.]

Standard 2. Duties and Responsibilities of Counsel

[Reserved.]

Standard 3. Caseload Limits and Types of Cases

Standard 3.1. 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.

Standard 3.1 adopted effective October 1, 2012

Standard 3.2. The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys, nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, “quality representation” is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state’s criminal justice system.

Standard 3.2 adopted effective October 1, 2012

Standard 3.3. General Considerations. Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney's caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney's numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

Definition of case. A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

Standard 3.3 adopted effective October 1, 2012

Standard 3.4. Caseload Limits. The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

150 Felonies per attorney per year; or

300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile Dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non-death-penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2; or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. (The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full-time attorneys.

Standard 3.4 adopted effective October 1, 2013, EXCEPT paragraph 3, misdemeanor caseload limits, adopted effective January 1, 2015.

Standard 3.5. Case Counting. Attorneys may not engage in a case weighting system, unless pursuant to written policies and procedures that have been adopted and published by the local government entity responsible for employing, contracting with, or appointing them. A weighting system must:

A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;

B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation;

D. be periodically reviewed and updated to reflect current workloads; and

E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upward. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

Standard 3.5 adopted effective October 1, 2012

Standard 3.6. Case Weighting. The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

A. Case Weighting Upward. Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers, and/or expenditures of time and resources should be weighted upward and counted as more than one case.

B. Case Weighting Downward. Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.

i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).

ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Noncomplex sentence violations should be weighted as at least 1/3 of a case.

iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.

iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed, or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.

v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative noncriminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Standard 3.6 adopted effective October 1, 2012

Related Standards

ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION Defense Function std. 4-1.2 (3d ed. 1993)

ABA STANDARDS FOR CRIMINAL JUSTICE: PROVIDING DEFENSE SERVICES std. 5-4.3 (3d ed. 1992)

AM. BAR ASS'N, GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF DEFENSE COUNSEL IN DEATH PENALTY CASES (rev. ed. 2003)

ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 06-441 (2006) (*Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*)

Am. Council of Chief Defenders, *Statement on Caseloads and Workloads* (Aug. 24, 2007)

ABA House of Delegates, *Eight Guidelines of Public Defense Related to Excessive Caseloads* (Aug. 2009)

TASK FORCE ON COURTS, NAT'L ADVISORY COMM'N ON CRIMINAL STANDARDS & GOALS, COURTS std. 13.12 (1973)

MODEL CODE OF PROF'L RESPONSIBILITY DR 6-101.

ABA House of Delegates, *The Ten Principles of a Public Defense Delivery System* (Feb. 2002)

ABA House of Delegates, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (Feb. 1996)

Nat'l Legal Aid & Defender Ass'n, Am. Council of Chief Defenders, Ethical Opinion 03-01 (2003).

Nat'l Legal Aid & Defender Ass'n, *Standards for Defender Services* std. IV-1 (1976)

Nat'l Legal Aid & Defender Ass'n, *Model Contract for Public Defense Services* (2000)

Nat'l Ass'n of Counsel for Children, *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* (2001)

Seattle Ordinance 121501 (June 14, 2004)

Indigent Defense Servs. Task Force, Seattle-King County Bar Ass'n, *Guidelines for Accreditation of Defender Agencies* Guideline 1 (1982)

Wash. State Office of Pub. Defense, *Parents Representation Program Standards of Representation* (2009) BUREAU OF JUDICIAL ASSISTANCE, U.S. DEP'T OF JUSTICE, INDIGENT DEFENSE SERIES

NO. 4, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001) (NCJ 185632)

Standard 4. Responsibility of Expert Witnesses

[Reserved.]

Standard 5. Administrative Costs

Standard 5.1. [Reserved.]

Standard 5.2.

A. Contracts for public defense services should provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel; telephones; law library, including electronic legal research; financial accounting; case management systems; computers and software; office space and supplies; training; meeting the reporting requirements imposed by these standards; and other costs necessarily incurred in the day-to-day management of the contract.

B. Public defense attorneys shall have (1) access to an office that accommodates confidential meetings with clients and (2) a postal address, and adequate telephone services to ensure prompt response to client contact.

Standard 5.2 adopted effective October 1, 2012

Standard 6. Investigators

Standard 6.1. Public defense attorneys shall use investigation services as appropriate.

Standard 6.1 adopted effective October 1, 2012

Standards 7-12 [Reserved.]

Standard 13. Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Standard 13 adopted effective October 1, 2012

Standard 14. Qualifications of Attorneys

Standard 14.1. In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and

C. Be familiar with the Washington Rules of Professional Conduct; and

D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and

E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and

F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and

G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

Standard 14.1 adopted effective October 1, 2012

*Standard 14.2. Attorneys' qualifications according to severity or type of case*¹⁵:

A. Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made 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 aggravated homicide case; and
- v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. Have completed at least one death penalty defense seminar within the previous two years; and
- vii. Meet the requirements of SPRC 2.¹⁶

¹⁵ Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

¹⁶

SPRC 2
APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law (and) be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel.

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist, and an investigator. Psychiatrists, psychologists, and other experts and support personnel should be added as needed.

B. Adult Felony Cases—Class A. Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The 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 two years in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases—Class B Violent Offense. Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The 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 one year in a private criminal practice; and
- iii. 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 Sex Offense Cases. Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Has been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases—All Other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each attorney representing a defendant accused of a Class B felony not defined in Section 2(C) or (D) 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. The 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 one year in a private criminal practice; and
- iii. 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

iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation. Each attorney acting as lead counsel in a “two strikes” or “three strikes” case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;¹⁷ and
- ii. Have at least:
 - a. four years’ criminal trial experience; and
 - b. one year’s experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. experience as counsel in cases involving each of the following:
 1. Mental health issues; and
 2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
 3. Expert witnesses; and
 4. One year of appellate experience or demonstrated legal writing ability.

G. Juvenile Cases—Class A. Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The 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 one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. 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. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or

¹⁷ RCW 10.101.060(1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require “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.”

- b. has served one year as a public defender; or one year in a private criminal practice, and
- iii. Has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

I. Juvenile Sex Offense Cases. Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Has been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

J. Juvenile Status Offenses Cases. Each attorney representing a client in a “Becca” matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Either:
 - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to “status offense” cases; or
 - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

K. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

L. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Attorneys handling termination hearings shall have six months’ dependency experience or have significant experience in handling complex litigation.
- iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
- iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.

M. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:

- i. The 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 one year in a private civil commitment practice, and
- c. been trial counsel in five civil commitment initial hearings; and

iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender “Predator” Commitment Cases. Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years’ criminal trial experience; and
 - b. One year’s experience as a felony defense attorney or one year’s experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 - 1. Mental health issues; and
 - 2. Sexual offenses; and
 - 3. Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment case should meet the minimum requirements in Section 1 and have either one year’s experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases. Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts. Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

Standard 14.2 adopted effective October 1, 2012

Standard 14.3. 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.
- C. 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, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a court of limited jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing a RALJ appeal.

Standard 14.3 adopted effective October 1, 2012

Standard 14.4. 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 in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

Standard 14.4 adopted effective October 1, 2012

Appendix H – Public Defense Attorney Certification Form

<input type="checkbox"/> Superior Court <input type="checkbox"/> Juvenile Department <input type="checkbox"/> District Court <input type="checkbox"/> Municipal Court For <input type="checkbox"/> CITY OF <input type="checkbox"/> COUNTY OF _____, STATE OF WASHINGTON	<input type="checkbox"/> No.: _____ <input type="checkbox"/> Administrative Filing
CERTIFICATION BY: [NAME], [WSBA#] FOR THE: [1 ST , 2 ND , 3 RD , 4 TH] CALENDAR QUARTER OF [YEAR]	CERTIFICATION OF APPOINTED COUNSEL OF COMPLIANCE WITH STANDARDS REQUIRED BY CRR 3.1 / CrRLJ 3.1 / JuCR 9.2

The undersigned attorney hereby certifies:

1. Approximately ____% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that :
 - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
 - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
 - c. **Investigators:** I have investigators available to me and will use investigative services as appropriate, in compliance with Standard 6.1.
 - d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective October 1, 2013 for felony and juvenile offender caseloads; effective January 1, 2015 for misdemeanor caseloads: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]
 - e. **Case Specific Qualifications:** I am familiar with the specific case qualifications in Standard 14.2, Sections B-K and will not accept appointment in a case as lead counsel unless I meet the qualifications for that case. [Effective October 1, 2013]

Signature, WSBA#

Date