

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING (as amended June 2008)

State funds disbursed to counties and cities pursuant to Chapter 10.101 RCW cannot be used to supplant local funds that were being spent on public defense services prior to the initial disbursement of state funds. State funds must be spent to improve the quality of legal representation directly received by indigent defendants. The funds cannot be spent on purely administrative functions. Following are guidelines regarding permitted use of state public defense funds.

1. State public defense funding under Chapter 10.101 RCW *may* be used in the following ways:

- a) Additional investigator services
- b) Additional expert services
- c) Creation of a public defense office
- d) New quality monitoring by an attorney coordinator who can act as a legal supervisor for the attorneys providing public defense (but non-attorney administrative employees of the county or city are not an approved use of funds)
- e) Computers or access to electronic legal research systems for public defenders
- f) Increase in public defense attorney compensation
- g) Provision of public defense services at first appearance calendars (or increase of first appearance services if public defenders are already provided)
- h) Addition of more attorneys to lower public defense caseloads
- i) Addition of social worker services to assist public defense attorneys
- j) Direct training costs to train public defense attorneys
- k) Evaluations of defendants for sentencing options, such as drug evaluations, SSOSA, DOSA
- l) Provision of internet connectivity (e.g. wireless) for public defense attorneys
- m) Provision of interpreter services for attorney-client interviews and communication (but in-court interpreter appointments required under Chapter 2.43 RCW are not an approved use of funds)

2. State public defense funding under Chapter 10.101 RCW *may not* be used in the following ways:

- a) Supplanting county or city funds used for public defense services prior to the initial disbursement of state funds to the county or city
- b) Billing or other administrative costs incurred by the county or city in administering the public defense program
- c) Indigency screening
- d) County, city or court technology systems or administrative equipment
- e) County or city attorney time, including advice on public defense contracting, except as provided in Section 1(d) above.

OPD PUBLIC DEFENSE IMPROVEMENT PROGRAM – CONTRACT ATTORNEY TIME REPORTING REQUIREMENT

All attorneys providing public defense services under contract to a county or city, must make an annual report to the contracting jurisdiction on the extent of their private caseload, if any.

As used in RCW 10.101.050, non-public defense cases are an attorney's private cases worked on during the previous year.

Attorney reports are required to provide the following information annually:

- (1) The number and type of cases in their private practice. (i.e. cases handled outside a defense contract including but not limited to retained cases of any type),
- (2) The number and type of other public defense contracts, if any, and
- (3) The total hours billed for non-public defense cases, if any.

Number and type of non-public defense cases handled: Case types may be indicated by general category, e.g. family law, retained criminal case or personal injury. The number of cases for each type should be reported.

Total hours billed for non-public defense cases: Attorneys who bill for some or all of their non-public defense representation on an hourly basis must report the total number of personal hours billed. Attorneys who accept retained cases on a flat fee basis (cases in which a negotiated fee is charged for the entire case) or on a contingency fee basis should indicate the fee types when reporting their cases.

COMMENTARY

Non-public defense case reporting by contract public defense attorneys is mandated under RCW 10.101.050. These reports permit a contract attorney's actual caseload to be monitored and assist in determining appropriate compensation levels for public defense services.

Attorneys are not required to provide client or case names or other identifying information, case fee amounts or hourly billing rates.

This reporting requirement does not apply to attorneys who accept only periodic court appointments to public defense cases.

The local jurisdiction must forward caseload reports when applying for public defense improvement funds. OPD will ask contracting jurisdictions to report contract attorneys' case type reports as part of the jurisdiction's case statistics information on the annual RCW 10.101 application.

**OPD PUBLIC DEFENSE IMPROVEMENT PROGRAM
TRAINING REQUIREMENTS
(as amended May 2016)**

Jurisdictions that apply for public defense funds shall require that all attorneys providing services annually attend at least 7 hours of trainings approved by the Washington State Office of Public Defense (OPD).

An approved training is a program or course of education in criminal defense offering instruction that improves an individual's substantive legal knowledge in the areas of criminal law, criminal procedure ethical knowledge or trial skills. Such training may include areas of civil practice in which an attorney provides public defense services such as dependency, civil contempt or civil commitment matters.

PROCEDURE

The CLE programs that OPD, the Washington Defender Association (WDA) and the Washington Association of Criminal Defense Lawyers (WACDL) offer shall be considered "approved trainings." In addition, courses approved by the Washington State Bar Association shall be considered "approved training" if the programs are related to criminal defense and are sponsored or presented by the following organizations:

Washington State Bar Association Continuing Legal Education Department;
University of Washington School of Law; Seattle University School of Law;
Gonzaga University School of Law; King County Department of Public Defense,
the National Association of Criminal Defense Lawyers, or the National
Association of Public Defenders.

An attorney who has attended a course or program other than one of those listed above shall apply to OPD for approval before the program or by the end of the calendar year in which the course or program is held. OPD shall approve the CLE if taught by professionals knowledgeable in the applicable subject area and if the course will improve an attorney's substantive legal knowledge, ethical knowledge or trial skills. Approval shall be at the discretion of the OPD director. Appeals of denials of approval may be made to the OPD Advisory Committee.

COMMENTARY

This policy comports with RCW 10.101.050, which requires that "attorneys providing public defense services attend training approved by the Office of Public Defense at least once per calendar year." It is also consistent with the Public Defense Standards endorsed by the Washington State Bar Association, (Standard Nine: Training), which requires that attorneys providing public defense services should participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice."

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

APPEAL PROCESS FOR COUNTY / CITY FUNDING UNDER RCW.10.101.060

RCW 10.101.060 directs the Office of Public Defense (OPD) to determine county and city eligibility for certain state public defense funding, and further provides for appeal if OPD determines a county or city to be ineligible and denies funding. The following procedure shall be used by counties and cities to appeal an OPD determination of ineligibility/denial of funding pursuant to Chapter 10.101 RCW.

1. OPD will notify the county or city of the denial in writing. If a county or city disagrees with the determination of the Office of Public Defense as to eligibility, the county or city may file an appeal.
2. All appeals shall:
 - a. Be filed in writing and signed by an authorized representative of the appellant.
 - b. Clearly and briefly state why the appellant believes OPD's determination is in error.
 - c. Be received by the OPD Advisory Committee within 10 court days of the date of OPD's denial letter.
3. Appeals shall be directed to:
Office of Public Defense Advisory Committee
c/o Washington State Office of Public Defense
P.O. Box 40957
Olympia, WA 98504-0957
4. The OPD Advisory Committee will consider an appeal at its next quarterly meeting at least two weeks after receipt of the appeal by the Advisory Committee, except that the chair may call a special meeting to consider an appeal. The Advisory Committee will notify the appellant of the time and location of the Advisory Committee meeting at which the appeal will be considered. The appellant may submit written materials and make a brief oral presentation to the Advisory Committee.
5. The Advisory Committee will notify the county or city of its final decision in writing within 10 court days of the Advisory Committee meeting at which the appeal was considered.
6. As provided in RCW 10.101.060, the decision of the Advisory Committee is final.