



Plan to Reform Public Defense Representation in Juvenile Offender Cases: Steps to Eliminate Justice by Geography

2016

Washington State Office of Public Defense

The development and writing of this Plan was supported by Award No. 2015-MU-MU-0013 awarded by the Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice or grant-making component.

Contents

Executive Summary	1
Introduction	5
I. Juvenile Indigent Defense Infrastructure in State Courts	6
I.A. Trial-Level Juvenile Public Defense	6
I.B. Funding of Juvenile Defense Delivery Systems	9
I.C. Independence of Juvenile Defense Delivery Systems	10
I.D. Indigence Determinations	12
I.E. Appellate Juvenile Defense	14
II. Juvenile Defense Services in Tribal Courts	16
III. Current Practices in Juvenile Public Defense	18
III.A. Representation throughout the Juvenile Court Process	19
III.B. Specialization of Juvenile Defense	22
III.C. Personnel and Resource Parity.....	23
III.D. Expert and Ancillary Services.....	24
III.E. Supervision and Monitoring of Workloads and Caseloads	25
III.F. Supervision and Performance Review Based on Standards.....	26
III.G. Ongoing Training and Education	27
III.H. Advocacy for Independent Treatment and Disposition Alternatives.....	28
III.I. Effective Advocacy for Educational Needs of Clients	29
III.J. Promotion of Fairness and Equity for All Children	29
IV. Strategies for Improving Juvenile Defense	31
IV.A. Juvenile Defense Workgroups to Address Statutes, Court Rules, Policies and Practices at the State and County Levels	31
IV.B. Independent, Specialized Oversight of Contract Attorneys.....	32
IV.C. Juvenile Public Defense Training	32
IV.D. Individual Case Consultations and Technical Assistance.....	33
IV.E. Expert and Ancillary Services.....	34
Appendix A – Juvenile Defense Improvement Group.....	36
Appendix B – County Site Visits	38
Appendix C – Juvenile Public Defense Attorney Survey	46

Executive Summary

Juvenile public defense attorneys play a critical role in maintaining the integrity of the juvenile justice system. When young people are charged with crimes, they and their families often face an unfamiliar environment filled with confusion and fear about what will transpire in the case, what rights they have, and what the ongoing consequences may be. Juvenile defense attorneys are the only voice in the courtroom to advocate for their clients' expressed interests. Defense attorneys are their clients' best source of comprehensive, reliable information and must be able to provide them the time and developmentally appropriate context necessary so they can be informed participants in their own defense.

Statewide, public defense attorneys in Washington represent juveniles in more than 90% of offender cases (often referred to as delinquency cases in other states). To adequately serve young clients' unique legal needs, juvenile public defense needs immediate and ongoing robust professional development.

The juvenile justice system in Washington is a *patchwork quilt* of sorts, with the trial courts, prosecution, and public defense services all managed and largely funded at the county level. In particular, each county has broad discretion in designing and resourcing its public defense system. Research shows extreme disparities from county to county in public defense compensation rates, administrative policies, employment structures, managing of client complaints, provision of support and resources, and oversight of attorney performance. Unfortunately, these discretionary components contribute to a concerning variation in the quality of juvenile representation, resulting in justice by geography.

A landscape such as Washington's presents a challenging environment for reform. Significant advancements have occurred in recent years to improve adult criminal defense, which is also administered at the county level. The path to change took shape over several years with leadership from the public defense community at both the state and local levels, financial resources from the Washington Legislature, and procedural mandates established by the Washington Supreme Court. A decade of improvements now includes mandatory caseload limits, mandatory attorney qualifications for different felony case types, centralized technical assistance, and some state grant funding.

Although Washington has successfully achieved significant public defense reforms in adult criminal representation, much more must be done to improve practices in juvenile public defense, and to change the systemic culture that perceives juvenile defense as a stepping stone for acquiring courtroom experience and advancing to adult felony representation.

Juvenile public defense attorneys in Washington typically fall into one of two categories: staff public defense attorneys are employed by public defense agencies (government or non-profit); and contract public defense attorneys work in private firms that contract with counties to represent indigent defendants. Attorneys employed by public defense agencies tend to work in environments with active professional supervision, administrative support, separate direct budgetary appropriations for experts and investigators, and other in-house resources. Contract attorneys, by contrast, tend to be self-regulated and typically must petition the court for funding for investigators and additional professional resources. In some counties the contract attorneys have formed supportive juvenile defense communities. In most counties, however, contract public defense attorneys carry mixed caseloads dominated by adult criminal cases. Without training opportunities or technical assistance resources focused on defending youth, these attorneys tend to fall into the practice patterns used in defending adult clients.

To address these issues, the Washington State Office of Public Defense (OPD) applied for and was awarded grant funds from the Office of Juvenile Justice and Delinquency Prevention's *FY2015 Smart on Juvenile Justice: Enhancing Youth Access to Justice Initiative*. OPD used grant funds to develop this Reform Plan to improve juvenile public defense services statewide. This Reform Plan was created through the input and collaboration of juvenile justice system stakeholders from all corners of the state, including the most populous metropolitan counties as well as rural communities. The Juvenile Defense Improvement Group (JDIG), described in detail in Appendix A, drew leadership representatives from public defense, the courts, prosecution, law enforcement, law schools, social services, and other critical partners. JDIG evaluated statewide data on public defense practices, and identified key measures expected to significantly improve juvenile public defense.

To inform the several half-day JDIG meetings, OPD conducted site visits which are described in more detail in Appendix B. OPD staff met with county-level juvenile justice stakeholders in eleven counties, groups of adjudicated and convicted youth currently residing at Green Hill School (a medium/maximum security facility for male offenders) and a group of parents/caregivers of youth who had been adjudicated for sex offenses. OPD further bolstered its research with a public defense attorney survey (see Appendix C for a summary of results) where attorneys from nineteen counties evaluated current delivery systems and identified key strategies for reform. Additionally, to better understand current practices in tribal courts and identify potential barriers to improving representation of tribal youth, OPD engaged in conversations with the Center of Indigenous Research as well as several tribes that exercise jurisdiction over juvenile offender cases.

This Reform Plan provides critical analysis of current juvenile public defense law, delivery systems, practices, and data:

- Section I describes how Washington counties administer and fund public defense services, and the primary differences between agency- and contract-based systems. Concerns over the quality of juvenile defense are greatest with respect to contract attorneys who, as a

group, are paid less, face greater obstacles for obtaining resources to enhance representation, and receive little or no professional guidance and supervision.

- Section II addresses tribal courts. While tribal courts collectively adjudicate few juvenile offender cases relative to the state court system, many tribes exercise jurisdiction over juvenile offender cases.
- Section III describes current juvenile public defense practices and laws as applied through the lens of the *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*, developed by the National Juvenile Defender Center and the National Legal Aid & Defender Association. Even where laws would appear to prescribe uniform practices, Washington's Juvenile Courts often differ in their application.

Based on this research and analysis of juvenile public defense law, practices, infrastructure and data, Section IV offers the following strategies to achieve effective and lasting improvements to Washington's juvenile public defense delivery systems:

- Juvenile defense-informed workgroups should be established at the county and state level to address laws, court rules, policies, and practices that impact the quality of representation provided to youth in offender cases.
- Contract juvenile public defense attorneys should be subject to independent, specialized oversight to ensure that they are effectively advocating for their clients' expressed interests. The current system that allows judges and unqualified county officials to select and evaluate contract attorneys is problematic. Economic resources, training, tools, and technical assistance are needed so that counties can administer juvenile public defense systems consistent with national standards.
- All juvenile public defense attorneys should attend introductory and ongoing training specific to representing youth in offender cases. With the establishment of a Juvenile Training Academy, new and experienced juvenile public defense attorneys will have access to training on a variety of topics unique to their specialized field.
- Individualized technical assistance should be made available to all juvenile public defense attorneys statewide. This service may be particularly valuable to solo practitioner attorneys who contract for juvenile defense. Services could include an expert juvenile defense attorney, easy access to practice advisories and a brief bank.
- Contract juvenile public defense attorneys should have increased access to specialized professional assistance to enhance the representation of youth. Investigators and social workers should have access to training on how to effectively assist attorneys in juvenile offender cases. Civil legal services for juveniles should be expanded to more counties and

more clients to address the education, benefits, housing, employment, record sealing, and other collateral needs of system-involved youth to promote rehabilitation and successful futures.

In a county-based public defense system there will always be some degree of variations from region-to-region. However, variations should occur in *how* quality public defense services are delivered, not *whether* they are available. Implementation of the steps identified in this Plan will substantially improve representation of youth in all corners of our patchwork state.



Introduction

Juveniles who are charged with crimes are guaranteed the right to counsel. In Washington, these public defense services are administered and funded at the county level, resulting different levels of quality and access to counsel from region to region. Although all Juvenile Courts are subject to a uniform Juvenile Code and Juvenile Court Rules in effect since 1977, wide variation still remains in both the interpretation and implementation of these laws and rules.

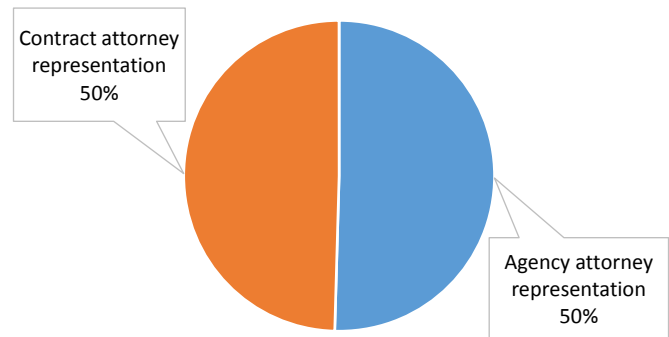
This Reform Plan was developed based on the input of key stakeholders in juvenile public defense. It contains an evaluation of juvenile public defense services that are currently being delivered, and suggestions for improvement to better represent the unique needs of juvenile clients. The evaluation of services and steps for reform are based on discussions among state leaders, observations in courtrooms, consultations with juvenile justice stakeholders throughout the state, analysis of laws and data, and input from youth and parents who have experienced the juvenile justice system. Staff from the Washington State Office of Public Defense (OPD) conducted site visits in eleven counties across the state, met with youth and parents, surveyed public defense attorneys statewide, and engaged in countless discussions with public defense, juvenile justice, and tribal court experts. These efforts led to the identification of repeated patterns of obstacles that inhibit quality representation and the development of effective strategies that will improve representation of youth by public defense attorneys in all corners of the state.

I. Juvenile Indigent Defense Infrastructure in State Courts

I.A. Trial-Level Juvenile Public Defense

Organization of Public Defense Services: With the exception of a few case types, public defense services in Washington are administered and funded at the county level.¹ Some counties have public defense government or non-profit agencies, which typically employ attorneys, supervisors, investigators, and support staff to represent indigent adult and juvenile clients. Other counties rely exclusively on contracted attorneys to provide public defense representation.

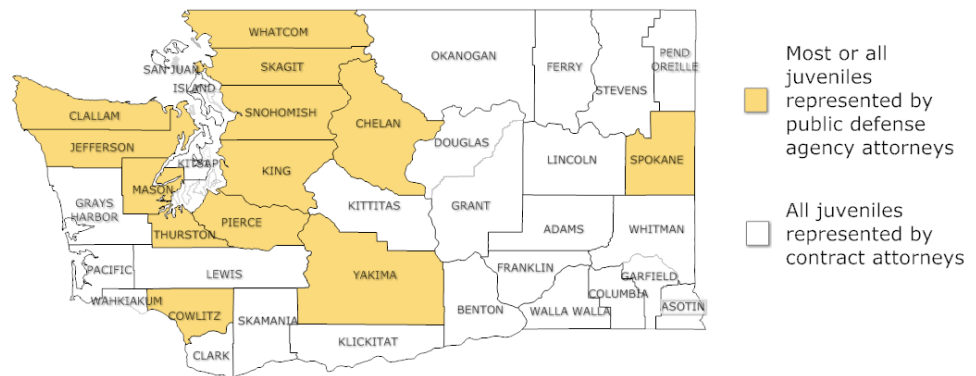
Figure 1: 2014 Public Defense Attorney Assignments - Juvenile Offender Cases



In 2014 public defense attorneys statewide represented youth in 10,545 juvenile offender cases. Approximately one-half (5,320) were handled by agency attorneys, and one-half (5,225) were handled by contract attorneys.²

Twenty-six counties relied exclusively on contract attorneys to provide public defense representation to youth in offender cases. In thirteen counties, most or all juvenile public defense representation was handled by attorneys employed by public defense agencies.

Figure 2: Public Defense Systems for Juvenile Offender Cases by County



¹ The Washington State Office of Public Defense funds and administers statewide public defense services in three specific areas: (1) indigent appellants where federal and state constitutions and state statutes guarantee the right to counsel, pursuant to RCW 2.70.005; (2) indigent respondents in civil commitment actions under Chapter 71.09 RCW; and (3) parents in dependency and termination cases in 32 of the state’s 39 counties pursuant to RCW 13.34.090 and RCW 13.34.092.

² Data self-reported in counties’ 2014 Chapter 10.101 RCW Grant Applications submitted to the Washington State Office of Public Defense. Case figures for Douglas County were estimated based on case filing data from the Administrative Office of the Courts.

Juvenile Public Defense Attorneys at Public Defense Agencies: In thirteen counties, the majority of juvenile offender cases are assigned to attorneys employed by public defense agencies (see Figure 2). Three additional counties, Grant, Benton, and Kitsap, have public defense agencies, but all juvenile offender cases are assigned to contract attorneys. Public defense agencies in Washington’s counties fall into two categories – government and non-profit. Government public defense agencies are county agencies in which all staff are county employees. Non-profit public defense agencies are private firms dedicated exclusively to public defense, are staffed similarly to county public defense agencies, and contract with the county. Counties that rely on agencies for juvenile public defense representation are predominantly located in the densely populated Puget Sound region, have the highest populations, and have the most court filings.

With some exceptions, agencies tend to compensate juvenile defense attorneys at levels similar to defense attorneys representing adults. However, staffing policies can stand in the way of fostering experience and expertise in juvenile defense. For example, when staff attorneys seek promotional advancements, they typically must first gain many years of experience representing adult defendants. This can act as a disincentive for attorneys to stay assigned to juvenile caseloads. Some agencies implement mandatory staff rotations, and attorneys are assigned to different areas of practice – including juvenile. In result, juvenile defense attorneys stay in the field for a limited period of time before a new group of attorneys are rotated-in. Counties with public defense agencies also contract with private attorneys to represent juvenile clients in conflict cases, and when cases exceed staff attorney caseload limits.

Twenty-six of Washington’s thirty-nine counties use contract models for representing youth in offender cases. Two of those counties have public defense agencies, but their attorneys and support staff are dedicated only to representing adults.

Attorneys that Contract with Counties to Represent Juvenile Clients: Twenty-six counties contract directly with private attorneys and firms for public defense representation in juvenile offender cases. County governments vary in the degree of oversight and monitoring given to contract attorney performance. In most locations county administrations recruit attorneys by issuing requests for proposals and enter into contracts with several or more attorneys. Few locations engage in ongoing monitoring of attorney performance.

When contract attorneys need investigators, experts, or other professional services, they typically file ex parte motions with the court for funding approval. Juvenile contract attorneys consulted for this project reported that such funding requests are commonly approved. However, investigators are not accessed as frequently as they would be if an in-house option were available. No contract attorney participating in surveys and discussions for this report, has ever sought funds for an independent social worker or other social service provider to assist with a juvenile case.

Compensation schemes for contract attorneys differ greatly, sometimes even within a county. Some attorneys are paid hourly, some by the case, and still others are paid flat fees for representation of a given number of cases. Most counties set different compensation rates by case type, while smaller counties tend to pay a flat amount for coverage of multiple case categories. Compensation rates, particularly for contract attorneys, differ greatly throughout the state. However, compensation rates for juvenile defense are nearly universally lower – some dramatically so – than rates paid for adult felony defense. These comparisons can be seen in Table 1 below.

Table 1: Comparison of 2015 Contract Attorney Compensation Rates for Adult Felony and Juvenile Offender Defense

County	Approx. Contract Compensation ³ per Adult Felony Case (Class C)	Approx. Contract Compensation per Juvenile Offender Case	Pay Gap: Amount Paid for Juvenile Defense Compared to Adult Defense
Clark	\$800 ⁴	\$290	60%
Lewis	\$600	\$200	56%
Grant	\$747	\$415	93%
Kitsap	\$1,135	\$400	59%
Kittitas	\$600	\$400	67%
Walla Walla	\$1,252	\$83	11%

Note: Attorneys that contract for public defense services are paid higher rates for representing adults charged with felonies than for representing juveniles in offender cases (many of whom are also charged with felonies).

To compare pay rates between felony and juvenile offender cases, it is important to consider the caseload differential. The Washington Supreme Court has set a maximum full-time annual adult felony caseload to be 150 cases, while a full-time caseload for juvenile cases is 250. Pay parity in the right column of Table 1 was calculated based on the different weights given to adult felony versus juvenile cases. For example, in Lewis County a juvenile offender attorney is paid \$200 per case. With a full caseload of 250 cases, the attorney would be paid \$50,000. Meanwhile, an attorney with a full-time felony contract would earn \$90,000. When comparing these amounts and taking into account the varying case weights, a full-time juvenile defender earns 56% of that earned by a full-time adult felony defender.

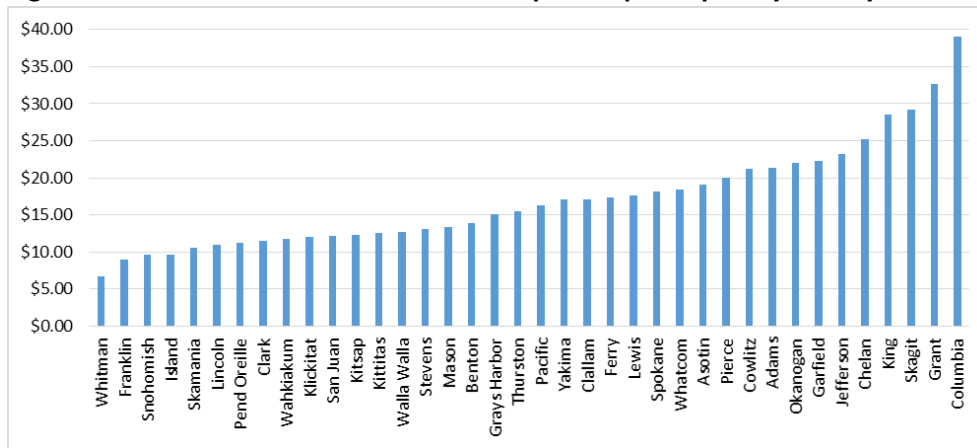
³ Some counties provide additional compensation for extra activities such as filing motions or days in trial. In such counties, the compensation amount included in this chart is only the *base* payment for one case.

⁴ Compensation rates based on 2015 public defense contracts submitted by each county to the Washington State Office of Public Defense as part of the Chapter 10.101 RCW grant application.

I.B. Funding of Juvenile Defense Delivery Systems

County governments pay nearly all costs associated with trial-level public defense in adult criminal and juvenile offender cases. Decisions related to public defense compensation rates, staffing levels, and other resources are made by county officials. Figure 3⁵ shows 2014 trial level public defense funding by county per capita. Variations in public defense spending can be attributed to local factors such as varying crime rates, population, law enforcement and prosecutorial practices, and geographic and economic factors.

Figure 3: 2014 Trial-Level Public Defense Expenses per Capita by County



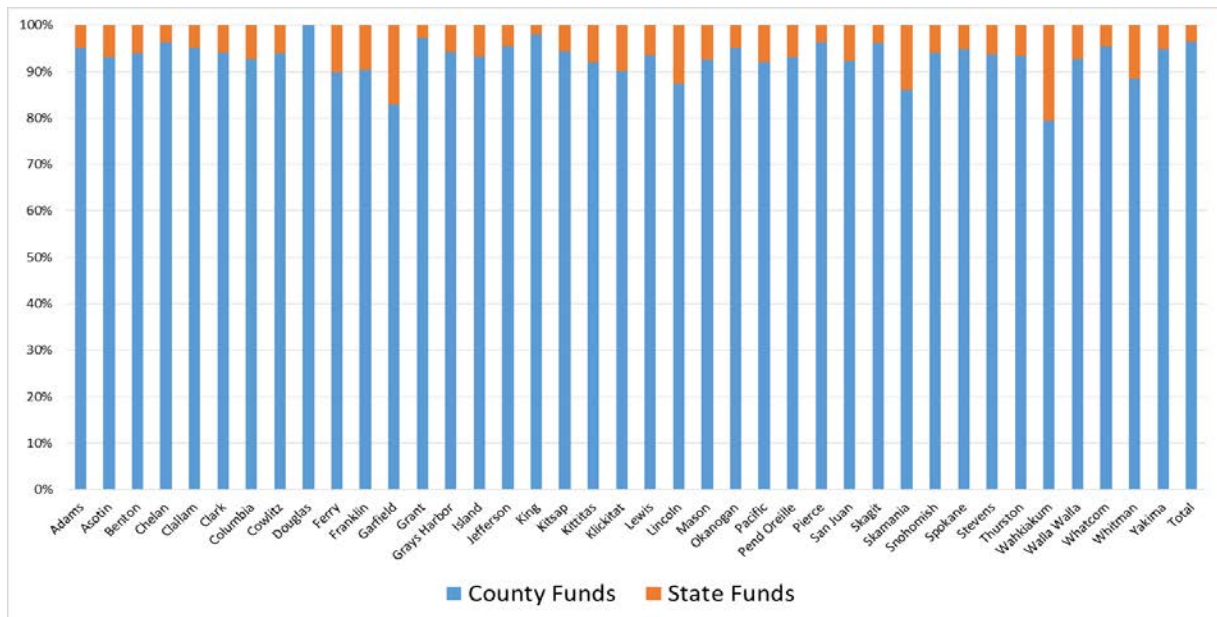
Note: Counties vary in the amount spent per capita on public defense services annually. In 2014 the amounts ranged from \$6.77 to \$39.06. The average was \$17.11.

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 mathematical formula in RCW 10.101.070. Allocations are calculated based on population size and adult felony filings. State funds awarded through this program are used to improve trial level criminal public defense services, but are not designated specifically for certain case types – such as juvenile.

In 2014 the State provided funding to counties for public defense in the amount of \$5,398,013. However, counties reported public defense expenses statewide as \$142,278,634. Therefore, state funding accounted for only 3.6% of county public defense budgets. A breakdown by county of the State’s contribution to public defense is shown below in Figure 4.

⁵ Expenditure data was self-reported by counties in their 2014 Chapter 10.101 RCW Grant Applications. Douglas County did not submit an Application.

Figure 4: 2014 Funding Sources for Trial-Level Public Defense



Note: Counties provide most funding for public defense services in trial-level cases, primarily comprised of adult criminal and juvenile offender cases. State funds account for only 3.6% of trial-level public defense expenses statewide.

In applying for state funds, counties must submit annual applications and provide detailed information about local public defense services – including expenditures. Based on information acquired in 2015 applications, it is estimated that in 2014 total statewide expenses for juvenile public defense was approximately \$9.5 million. This amount comprises only 6.7% of county-level public defense expenses statewide.

I.C. Independence of Juvenile Defense Delivery Systems

Public defense clients are entitled to representation that is independent from the judiciary and political influence. Independence is critical to insulate the constitutional right to counsel from a host of competing interests, such as reducing budgets, processing cases more quickly, and responding to public safety concerns.

National leaders routinely identify independence as the most fundamental element in a public defense system.⁶ As established by the American Bar Association,

⁶ Independence is the first Principle in the ABA’s Ten Principles of a Public Defender System, and the First Commandment of the National Legal Aid and Defender Association’s Ten Commandments of Public Defender Delivery Systems. The importance of independence was recently profiled by the National Association of Criminal Defense Lawyers in its report “Federal Indigent Defense 2015: The Independence Imperative,” (2015) found at: <https://www.nacdl.org/federalindigentdefense2015/>.

The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel... Removing oversight from the judiciary ensures judicial independence from undue political pressure and is an important means of furthering the independence of public defense...⁷

In most counties with public defense agencies, judges play little or no role in the hiring or firing of staff attorneys. Additionally, some counties such as Clark, Benton, and Franklin have developed specialized oversight of contract counsel. In these counties all juvenile representation is handled by contract attorneys, yet each county employs a full-time Public Defense Coordinator to oversee attorney contracts and performance. These Coordinators are experienced trial attorneys employed by the county to ensure that services are carried out in compliance with constitutional and statutory requirements, court rules, attorney ethics, and best practices in the field. In these counties the Coordinators, not the judges, exercise significant control in the selection of contractors and decisions to terminate contracts.

In contrast, in most counties that contract for juvenile public defense services, judges and court administrators play an influential role in the selection and evaluation of contract defense attorneys. Most contracts are one year in duration, making attorneys' employment status unstable from year to year. Because of the court's integral role in the selection and retention of attorneys, there is a danger of attorneys' performance being influenced by an explicit or implicit desire to garner judicial approval. These influences could impact attorneys' conduct and communication with clients in situations such as discussing plea offers, trial options, and filing appeals.

In some jurisdictions the court's integral role in public defense attorney selection and monitoring has been codified into the county ordinances. For example, the Kittitas County Code provides that all attorneys contracted for public defense services "shall be selected solely by the court."⁸ In other counties, "Attorneys providing public defense services shall be subject to monitoring and evaluation by the Court."⁹ Ordinances in two counties state that oversight by judges is appropriate because judicial officers "see them in action."

Some county ordinances require judges to play active roles in the selection and evaluation of contract public defense attorneys.

⁷ Ten Principles of a Public Defense Delivery System, American Bar Association, 2002.

⁸ An Ordinance Relating to Public Defender Services: Adding a New Chapter to the Kittitas County Code Adopting Standards for the Delivery of Public Defense Services, Ordinance no. 2008-12, Chapter 2-09.020, April 15, 2008.

⁹ In the Matter of Adoption of Walla Walla County Standards for Public Defense Services, Resolution No. 04335, Standard Eight: Monitoring and Evaluation of Attorneys, Dec. 20, 2004. See also Wahkiakum County Ordinance Chapter 2.144.100 and Pacific County Ordinance No. 159, Section 10 (2009) which both state: "Primary monitoring and evaluation of public defenders shall be done by the judicial officers who see them in action."

Judges provide helpful insight to public defense supervisors and contract managers as to attorneys' performance in the courtroom, which reasonably should play some part of attorney evaluation. However, the role, interests, and professional duties of a judicial officer are vastly different from those of a defense attorney. Selection and oversight of attorneys should be insulated from any opportunity for undue influence that could potentially jeopardize effective representation of public defense clients.

I.D. Indigence Determinations

In appointing counsel, courts are required to conduct some form of indigency screening, and juvenile courts around the state vary in their practices. Washington law requires courts to administer indigency screening “for all persons wishing the appointment of counsel in... cases where the right to counsel attaches.”¹⁰ In addition, the Juvenile Justice Act of 1977 requires courts to appoint counsel to any juvenile who is financially unable to obtain counsel without causing substantial hardship to himself or herself or the juvenile's family.¹¹ However, some courts still use their discretion to screen for payment for public defense services in juvenile offender cases.

Some courts require families to submit declarations pertaining to their assets and income, while others ask a few simple questions on the record. The law requires a finding of indigence when the applicant meets at least one of the following three criteria: (1) receipt of needs-based public assistance; (2) being involuntarily committed to a public mental health facility; or (3) receipt of an annual income, after taxes, of 125% or less of the federal poverty level.¹² When an applicant does not meet these requirements but is still unable to pay the anticipated cost of counsel, the court has the option of appointing counsel with the requirement that the party pay some portion of the cost.¹³

Various statutes provide safeguards to ensure that indigence screening requirements or orders to reimburse costs do not interfere with juveniles' access to counsel at court hearings. First, when indigence determinations cannot be made prior to a court proceeding, the court should still appoint public defense counsel on a provisional basis.¹⁴ Second, when parents or guardians refuse to pay ordered amounts, the court must still provide counsel to the youth.¹⁵ Youth are only permitted to proceed pro se when all requirements for waiver of counsel have been met – later discussed in this report.

¹⁰ RCW 10.101.020(1).

¹¹ RCW 13.40.140.

¹² RCW 10.101.010 (3).

¹³ RCW 10.101.010 (4).

¹⁴ RCW 10.101.020 (4).

¹⁵ RCW 13.40.140 (2).

According to data entered into the Judicial Information System (JIS), the case management system used by County Superior Courts, in 2014 ten counties reported ordering recoupment of public defense costs.¹⁶ As shown below in Table 2, five counties ordered recoupment in more than one-half of juvenile offender cases.

Table 2: Public Defense Recoupment Orders for Juvenile Offender Cases Filed in 2014

<i>County</i>	No. of Cases Public Defense Recoupment Not Ordered per JIS	No. of Cases Public Defense Recoupment Ordered per JIS	Percentage of Cases Recoupment Ordered
<i>Benton</i>	525	273	52%
<i>Douglas</i>	85	44	52%
<i>Franklin</i>	195	105	54%
<i>Jefferson</i>	47	13	28%
<i>Lewis</i>	195	117	60%
<i>Mason</i>	100	1	1%
<i>Skamania</i>	20	7	35%
<i>Snohomish</i>	1225	21	2%
<i>Whitman</i>	51	1	2%
<i>Yakima</i>	831	441	53%

Note: Of all juvenile offender cases filed statewide in 2014, courts ordered families to pay some recoupment of public defense costs in 1,023 cases. Five counties ordered recoupment in more than 50% of juvenile offender cases.

As illustrated in Table 3, counties that routinely impose public defense recoupment costs vary in the amounts ordered. For example, in Yakima County where courts impose public defense costs in 53% of juvenile offender cases, the average amount ordered was \$26. In contrast, the court in Douglas County ordered \$125 in each juvenile offender case for which public defense costs were imposed.

Data indicates that ordering recoupment of juvenile defender costs provides little relief for counties' public defense expenses. JIS shows that in 2014, families were ordered to pay public defense costs in 1,023 cases. However, as of May 2016, payment was still owed in 757 cases.

Table 3: Public Defense Recoupment Amounts for Juvenile Offender Cases Filed in 2014

<i>County</i>	Average Amount Ordered
<i>Benton</i>	\$50
<i>Douglas</i>	\$125
<i>Franklin</i>	\$50
<i>Jefferson</i>	\$185
<i>Lewis</i>	\$158
<i>Skamania</i>	\$113
<i>Yakima</i>	\$26

¹⁶ Data provided from the Administrative Office of the Courts to the Washington State Office of Public Defense on May 17, 2016.

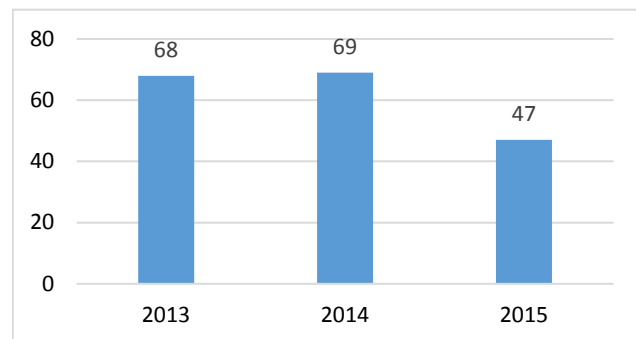
The recoupment amounts ordered in 2014 ranged from \$10 to \$500, with an average of \$58.36. As of May 2016, the total amount recouped from 2014 orders was \$16,567. Since the estimated statewide cost for public defense services in juvenile offender cases is approximately \$9.5 million, ordering the payment of public defense costs appears to have little impact on the funding of public defense services. Court-imposed debt, however, can have significant ramifications on juveniles' families.¹⁷

I.E. Appellate Juvenile Defense

Unlike trial-level defense, in Washington the State funds the cost of counsel for indigent defense appeals. OPD contracts with attorneys to represent indigent appellants in cases where federal and state constitutions and state statutes guarantee the right to appellate counsel, including juvenile offender cases. Each attorney tends to practice primarily in one of the three divisions of the Washington Court of Appeals, and all routinely represent indigent appellants before the Washington Supreme Court. OPD selects attorneys and firms based on their experience and demonstrated appellate writing ability. Attorney performance is monitored through periodic evaluation of appellate briefs, observation of oral argument, review of practice statistics, such as the number of discretionary pleadings filed, and review of any sanctions or complaints against the attorney. Appellate attorneys must complete at least seven continuing legal education (CLE) credits in relevant practice areas each year, and must provide proof of such completion on OPD's request. OPD also provides periodic CLEs reserved for appellate contract attorneys.

As shown in Figure 5, a relatively small number of juvenile offender adjudications are appealed by trial counsel. It is predicted, however, that the number of juvenile appeals may increase due to a recent prohibition on juvenile appellate costs. In 2015 the YEAR Act¹⁸ was signed into law, streamlining the juvenile record sealing process, as well as reducing or eliminating numerous legal financial obligations in juvenile offender cases. Previously the appellate courts routinely assessed \$3,600 in costs against each juvenile who did not prevail on appeal. The costs, which were assessed regardless of the juvenile's indigent status, were intended to partially reimburse costs for public defense, transcript, clerk's papers, and prosecutor's copying and printing. However, the YEAR Act amended RCW 10.73.160 to eliminate imposition of any costs

Figure 5: Notice of Juvenile Offender Appeals Filed 2013 - 2015



¹⁷ *Justice Department Condemns Profit-Minded Court Policies Targeting the Poor*, Matt Apuzzo, New York Times, March 14, 2016.¹⁸ RCW 13.50.260 and RCW 13.40.190.

¹⁸ RCW 13.50.260 and RCW 13.40.190.

on juvenile appeals, regardless of outcome. In previous years juveniles may have opted to not pursue appeals when attorneys advised them of the potential financial consequences should they lose on appeal. As the YEAR Act's provisions become better understood among juvenile defense attorneys and communicated to their clients, more appeals are likely to be filed.

II. Juvenile Defense Services in Tribal Courts

Jurisdiction over American Indian Juveniles: American Indian youth face unique challenges when they come into contact with the juvenile justice system. Unlike the majority of youth charged with delinquency offenses and prosecuted in state courts, young American Indians may be prosecuted in three distinct justice systems: federal, state, or tribal, and are subject to transfer to adult court within any of these systems.

All youth in federal and state courts—including American Indian youth, are entitled to due process protections under the Fifth Amendment, including the due process right to counsel afforded by In re Gault. However, under the well-settled principles of tribal sovereignty, the constitutional rights and due process protections that afford indigent defendants a right to counsel in the United States do not apply to American Indian youth prosecuted in tribal courts.

For American Indian youth, having counsel who recognizes the rich heritage of native communities and the youth’s unique tribal identity, who will work with the youth to fashion detention alternatives or disposition plans that reflect the strength of the youth’s culture and customs can serve to empower the youth and create positive change in the youth’s life. Defense counsel can also serve to educate the court and other system players about creative alternatives that are available for youth within their tribal nation.

Washington State Jurisdiction in Tribal Courts: In Washington most tribes share jurisdictional authority to prosecute juvenile offender cases with the State. The State of Washington was granted that authority by the United States Congress, and implemented it through the passage of RCW 37.12. Some tribes exercise jurisdiction over American Indian juvenile offenders who reside on their reservations, while others leave the adjudication of juvenile cases to county or municipal courts.

Figure 6: Tribal Courts with Jurisdiction over Juvenile Offender Cases



Note: The circled names of tribes indicate which tribal courts exercise jurisdiction over juvenile offender cases.

In 2011 a survey revealed that two thirds of the 28 federally recognized tribes in Washington exercised their jurisdiction to prosecute juvenile offender cases. In 2016 OPD contacted each tribal court to update this information. Among the 21 responding tribal courts, 15 affirmed that they exercise jurisdiction over juvenile offender cases. These tribes are circled in Figure 6. The approximate number of tribal court juvenile offender cases from 2015 are listed below in Table 4. All but one of the 15 tribal courts stated that youth are represented by licensed attorneys for public defense services.

Table 4: Approximate Number of 2015 Juvenile Offender Cases in Tribal Courts

Approximate Number of Juvenile Offender Cases in 2015	Tribal Courts
0-10	Chehalis, Hoh, Kalispel, Lower Elwha Klallam, Nisqually, Port Gamble S’Klallam, Puyallup, Sauk-Suiattle, Skokomish, Suquamish
10-20	Makah
20-30	Squaxin Island, Swinomish
30-40	Lummi
40-50	Quinault

As part of the Models for Change Initiative in Washington State, the Native American Law Center of the University of Washington School of Law developed a Model Juvenile Code based on best practice standards from around the country in the hope of having the model code adopted by a majority, if not all, tribes exercising juvenile offender jurisdiction. By advocating for adoption of a uniform code, the Center hoped to reduce the variations in the way that native youth are treated by tribal courts around the state. Now five years later, some tribes have incorporated parts of the code into their existing laws, but none appear to have adopted the Code in its entirety. As a result a same of justice by geography continues to exist in the tribal juvenile courts.

III. Current Practices in Juvenile Public Defense

The evaluation of current practices in this section is organized according to the National Juvenile Defender Center and the National Legal Aid & Defender Association’s *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems*. This document offers “guidance to public defense leaders and policymakers regarding the role of public defenders, contract attorneys, or assigned counsel in delivering zealous, comprehensive and quality legal representation on behalf of children facing both delinquency and criminal proceedings.”¹⁹

A collaboration of key stakeholders in Washington’s juvenile justice system have successfully implemented a number of reforms in the past ten years which have resulted in improved opportunities for better outcomes for court-involved youth.²⁰ While many gains have been made, more statutory improvements and court rules are yet to be made. The collaborative framework used for recent changes can be leveraged to continue the momentum in advocating on a statewide level for juveniles’ rights.

The findings in this section are based on county site visits conducted by OPD (see Appendix B), discussions with the Juvenile Defense Improvement Group (see Appendix A), a survey administered to juvenile public defense attorneys (see Appendix C), and numerous conversations with juvenile justice system stakeholders. Further, to the extent possible, data from the court’s case management system – JIS (Judicial Information System) was analyzed to identify trends and local practices.

Washington’s decentralized court system creates challenges and limitations in researching juvenile court data. “While Washington may be considered a ‘data rich’ state when it comes to statewide court data, there have been challenges associated with improving the access, availability and analytical capabilities associated with local county-based juvenile justice data.”²¹ Unfortunately the availability of data pertaining to juvenile public defense practices is even more limited.

“While Washington may be considered a ‘data rich’ state when it comes to statewide court data, there have been challenges associated with improving the access, availability and analytical capabilities associated with local county-based juvenile justice data.”

¹⁹ Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems, National Juvenile Defender Center and National Legal Aid & Defender Association, Preamble, 2008. Found at: <http://njdc.info/wp-content/uploads/2013/11/10-Core-Principles.pdf>

²⁰ Juvenile Court Rule 7.15 limits the waiver of counsel; Juvenile Court Rule 1.6 eliminates presumptive shackling, RCW 13.040.030 allows some youthful offender (juveniles tried as adults) to be returned to the jurisdiction of the juvenile court.

²¹ “Beyond Anecdote: New Resources in Washington State for Data-Informed Policy Reform,” Washington State Center for Court Research and National Center for Juvenile Justice, page 3, December 2013.

III.A. Representation throughout the Juvenile Court Process

The first Core Principle addresses the need for competent and diligent representation of juvenile clients throughout all stages of juvenile offender matters. This Principle strives for prohibitions against waiver of counsel, appointment at the earliest possible stage, continuous legal representation throughout the proceedings, and assistance with post-disposition matters such as probation, appeal, and sealing of records.

III.A.1 Waiver of Counsel

In 2003 national organizations conducted an assessment of Washington’s juvenile public defense system, in which key recommendations were made for ensuring compliance with national standards, and for improving representation.²² Among them was the recommendation that “Washington law should be changed to conform to national standards prohibiting children from waiving the right to counsel.”

Since then, Washington courts have taken great strides to ensure that youth are represented by counsel at each proceeding in offender cases. Juvenile Court Rule 7.15 has played a significant role in preventing the formerly common practice of waiver of counsel. All youth have the right to waive counsel, but very few do. Under the Rule, when a waiver is requested the court must ensure that the youth has an individualized consultation with counsel, and completes a plain-English form detailing the potential consequences for each charge.

Prior to the adoption of the new waiver rule, youth frequently waived their right to counsel without the benefit of discussing those consequences with an attorney.²³ In recent years the practice significantly decreased. In interviews conducted around the state, public defense attorneys, judges, and prosecutors repeatedly reported that waivers of counsel rarely or never occur. When they do, the courts are careful to ensure that the youth have ample opportunity to consult with counsel.

These anecdotal reports coincide with the data reported in the JIS. Court staff are instructed to enter a specific docket code when waiver of counsel occurs. As shown in Table 5, between the years of 2013 – 2015 the number of waivers statewide ranged from 6 to 15.

²² *Washington: An Assessment of Access to Counsel and Quality Representation in Juvenile Offender Matters*, American Bar Association Juvenile Justice Center and National Juvenile Defender Center, p. 58, October 2003.

²³ *Ibid*, 29-30.

Table 5: Waivers of Counsel in Juvenile Offender Cases – Statewide 2013-2015

County	2013	2014	2015
Island	8	6	1
Grant	0	0	1
Jefferson	2	0	0
Pacific	5	3	3
Whitman	0	0	1
TOTAL	15	9	6

Note: JIS reports that judges ordered waivers of counsel in 30 juvenile offender cases from 2013 – 2015. While this represents a very low number of cases statewide, it is concerning that 26 of the waivers occurred within two small counties.

Despite the low occurrence of waivers, analysis of the JIS data indicates that they tend to concentrate in certain counties. For example, as shown in Table 5, two counties – Island and Pacific, have had waivers each year for the past three years, yet these counties have relatively few juvenile offender filings. This is noteworthy considering that thirty-four counties report no waivers during the past three years. In review of the cases with waivers occurring in 2015, four youth had been charged with misdemeanors or gross misdemeanors.

III.A.2. Early Access to Counsel

National standards prescribe the appointment of counsel “at the earliest possible stage” of juvenile offender hearings.²⁴ Washington law, as written, requires that youth charged with criminal charges be represented by counsel in court. Specifically, the Revised Code of Washington requires that youth in offender cases be represented in all “critical stages,” and at any stage where the youth “may be in danger of confinement.”²⁵ Equally important, a parent or guardian’s ability and unwillingness to pay cannot be a reason to deny public defense services.²⁶ However, practices throughout the state show varying degrees of interpretation and application of these legal standards.

Based on information collected through site visits and interviews, most juvenile courts follow the statute and appoint counsel to in-custody and out-of-custody youth at preliminary hearings. However, in some counties appointment occurs without the presence of counsel. Out-of-custody youth are summonsed to court for a hearing where the charges and standard legal rights are read. Typically the judge makes an appointment order on the record unless the youth have retained private counsel. However, the appointed counsel is absent. Instead, the court provides the youth with the name and contact information of their attorney, and instructs them to meet with counsel prior to the next scheduled hearing. If the summonsed youth do not appear for the preliminary

²⁴ Ten Core Principles, Principle 1.

²⁵ RCW 13.40.140 (2).

²⁶ Ibid.

hearings, the court issues warrants for their arrest. In certain circumstances, it is possible that youth can be placed into custody at these initial hearings, without the assistance of counsel.

In juvenile courts where counsel is present at first-appearance and preliminary hearings, most jurisdictions still fall behind by not providing *informed* counsel. Public defense attorneys are most commonly appointed on-the-spot, and have no information about the charges, alleged facts, or their new clients' backgrounds. As such, youth and their parents/guardians have no ability to speak with the attorney prior to the first appearance, as they would likely do with privately retained counsel. Also, in some jurisdictions where it is highly predictive that counsel will be appointed and who the attorney will be, this attorney does not have access to discovery, as prosecutors only provide discovery to counsel after formal appointment has occurred.

Parents and adjudicated youth who were interviewed recalled the anxiety of going to court for the first hearing, and having no idea of what to expect. They reported having, at most, 5-minute hallway conversations with a public defense attorney prior to the hearing, leaving no opportunity to understand the process and potential short-term or long-term consequences. Alternatively, parents who had retained private counsel reported meeting in advance of the preliminary hearing to better understand and prepare for the court process. Therefore, youth of indigent families are receiving less effectual representation at what can be the most confusing and critical phase in an offender case. The state's largest jurisdiction, King County, has found a workable solution to this issue. The Court clerk is authorized to appoint counsel for all juveniles when charges are filed. Notices of Appointment and copies of discovery are provided to the county public defense agency, and staff manage the attorney assignment and conflicts checks. This early appointment process creates the opportunity for attorneys to engage in meaningful conversations with young clients prior to preliminary hearings.

[III.A.3. Post-Dispositional Access to Counsel](#)

In most counties post-disposition representation of youth is limited to restitution matters and probation violations. Statutes and court rules do not specify when an attorney should withdraw from representation in offender cases, resulting in a variety of approaches statewide. Washington public defense attorneys do not, as a regular practice, stay engaged with juvenile clients to assist with post-dispositional requirements and treatment opportunities. Some keep their juvenile cases open after the client's disposition hearing, but typically only engage in the case if contacted by the youth, or if the court sends a notice of a probation violation hearing. Some attorneys provide additional assistance when requested by former clients on limited issues like record sealing and relief from sex offender registration.

Most public defense attorneys are expected to assume caseloads that approach or reach the limits established by the Washington Supreme Courts.²⁷ "Credit" or "weight" is rarely given to work spent

²⁷ The Washington State Supreme Court Standards for Indigent Defense of Juvenile Court Rule 9.2 require all full-time, fully-supported public defense attorneys to limit their annual appointments to a maximum of 250 juvenile

on juvenile advocacy beyond representation on the criminal charges. Some attorneys indicated that they would be willing to provide post-disposition representation if appropriate credit were given to their workload. Until then, this work remains uncompensated and is often seen as being outside the scope of their representation.

Additionally, when youth are summonsed to court for alleged probation violations, they are often not represented by the same attorney who handled the underlying case. Probation violation hearings are commonly grouped together on “Show Cause” or “Probation Violation” calendars. These calendars are staffed by an “attorney-of-the-day” who may or may not have previously represented the youth. Most probation violation matters are settled on these calendars per agreements between the defense, prosecution and probation officer. This practice is a hold-over from when caseloads were previously much higher, and as a way to better economize attorney resources. This practice is also reflective of the lack of representational relationship between attorneys and juvenile clients during the probationary period.

A handful of counties – King, Snohomish, Pierce, Yakima, and Spokane - are fortunate to have a local non-profit organization, TeamChild, which employs civil legal aid attorneys to assist youth with post-disposition legal issues like education, record sealing, relief from registration, employment, and medical benefits and housing. In these counties, the civil legal aid attorneys and the public defenders maintain a cooperative relationship, and make referrals to each other’s services. Attorneys and judges in these counties identified the civil-criminal collaboration as a major advantage to their juvenile justice systems. The two statewide legal services organizations, Northwest Justice Project and Columbia Legal Services also provide limited assistance to juvenile offenders with their civil legal needs through a telephonic advice line or clinical programs.

III.B. Specialization of Juvenile Defense

The Ten Core Principles emphasizes the importance of juvenile defense as a specialized area of practice that differs from representation of adult clients. Washington requires no specialized training or experience to be eligible to represent juvenile clients. Even among attorneys who want to become specialized in juvenile offender work, Washington provides few opportunities to support them. The majority of currently available training opportunities focus on general trial skills and adult practice issues.

During site visits it was commonly stated that there are high turnover rates in juvenile public defense, as well as juvenile prosecution and juvenile judicial appointments. The legal community commonly perceives juvenile offender work as a stepping-stone for gaining courtroom experience, and advancing to adult felony work. This perception is bolstered by the pay disparity between juvenile offender and adult felony contract rates, and the lack of promotional opportunities for

offender cases, or 150 adult felonies, or 400 adult misdemeanors. Attorneys carrying caseloads with a mixture of case types must apply the limits proportionately to determine a full caseload.

juvenile public defense attorneys employed by public defense agencies (see Section I.A. of this report).

OPD collects some data on attorney turnover through counties' Chapter 10.101 RCW grant applications. In those applications counties identify their contract attorneys, indicate the approximate number of cases they receive each year by case type, and attach copies of their contracts. The county applications submitted in 2015 provided contract attorney information for most, but not all counties. Of the counties included, there were 143 contract defense attorneys who represented youth in offender cases. The number of assigned cases per attorney ranged from 1 - 250, with an average of 46 cases. Many attorneys contracted for other public defense case types as well, most frequently adult criminal cases. A comparison of the listed names of juvenile contract attorneys from 2011 versus 2015 revealed that a 50% turnover. One-half of the contract attorneys representing juvenile clients in 2011 no longer represented juvenile clients in 2015.

III.C. Personnel and Resource Parity

Principle Three calls for personnel and resource parity for juvenile public defense attorneys. Specialization in juvenile defense should not be limited by barriers to financial advancement, personnel benefits, or legal resources. However, disparities are strong for juvenile public defense attorneys in Washington. Contract juvenile public defense attorneys receive lower compensation than attorneys who contract for adult felony public defense. As shown in Table 1 in Section 1.A., compensation ratios between juvenile and adult felony cases for contract attorneys varies by county. In Grant County, for example, contracts for juvenile offender cases pay 93% of the amounts paid for adult felony class C case contracts. On the other hand, Walla Walla County's 2015 contract compensation rate for juvenile offenders was only 11% of the rate paid for adult felony class C cases.

Pay parity between these groups is more balanced in county and nonprofit public defense agencies, yet attorneys working in juvenile units often have fewer opportunities for advancement, which includes access to higher salary levels. Because of these compensation inequities, juvenile defense is often treated as a field to gain practical experience before moving up to adult felony representation.

Effective defense representation of juveniles requires more than just trained, experienced attorneys. Defense attorneys, like prosecutors, must have sufficient resources to properly represent their clients. The scope of resources needed is quite broad, ranging from availability of an office for confidential communications, to investigators and experts to provide their professional services. The Washington State Bar Association's publication *Standards for Indigent Defense Services*²⁸

²⁸ Available at: http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/~/_media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20Approved%20by%20BOG%20as%20of%209%2022%2011.a.shx

(WSBA Standards) serve to inform counties of the development and administration of local public defense services. The Washington Legislature has affirmed this document's importance on guiding local decision-making on public defense policy, practices, and infrastructure.²⁹ The WSBA Standards call for resources such as:

- Compensation levels comparable to prosecutors (Standard One)
- Fees for expert witnesses (Standard Four)
- Funding of administrative support costs – travel, office, electronic research, case management systems, computers and software, and supplies (Standard Five)
- Funding of investigators (Standard Six)
- Funding of support services – legal assistants, social work staff, mental health professionals, and interpreters (Standard Seven)

Counties' compliance with these standards can be used as performance indicators of an effective juvenile defense infrastructure. Most jurisdictions appear to be meeting standards in terms of providing fees for experts, investigators, and interpreters in juvenile offender cases. Also, many counties with public defense agencies have pay parity with prosecutors and fund administrative costs and support services. However, contract attorneys' pay rates in most jurisdictions are extremely low, and insufficient to sustain the level of resources expected in an office providing criminal defense services.

III.D. Expert and Ancillary Services

In addition to the provision of quality attorney representation, the Ten Core Principles identify the importance of expert and ancillary services. Examples of experts include, for example, mental health professionals, education specialists, forensic examiners, DNA experts. Other professionals that provide crucial services to public defense representation include investigators, interpreters, and social workers.

Washington case law and court rules also recognizes that these services must be included in the scope of public defense representation. The Washington Supreme Court has established that all counties must provide a process for defenders to request additional support, such as experts, for effective representation of their clients.³⁰ The Court also set high expectations for public defense attorneys to utilize investigative services. Even in cases where juveniles admit guilt to counsel and plan to plead guilty, attorneys still have a duty to investigate.

“False confessions (especially by children), mistaken eyewitness identifications, the fallibility of child testimony are well documented...at the very least, counsel must reasonably

²⁹ RCW 10.101.030 states in part, “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.”

³⁰ JuCR 9.3(a); CrR 3.1(f)(1); and CrRLJ 3.1(f)(1).

evaluate the evidence against the accused and the likelihood of a conviction if the case proceeds to trial so that the defendant can make a meaningful decision as to whether or not to plead guilty.”³¹

Juvenile defense attorneys responding to a survey (see Appendix C) were asked to assign priority ranking to suggested improvements. “Additional funding for experts, investigators or social workers” received the highest ranking.

Surveyed juvenile public defense attorneys identified additional funding for experts, investigators and social workers to be the top priority for improving representation of juvenile clients.

Access to and utilization rates of experts in defending juveniles vary widely in the state. In most counties support services such as investigators and experts must be requested and justified to the court. Partially as a result of this cumbersome process, contract and court appointed attorneys rarely seek the appointment of experts. It is not uncommon for contract attorneys to highlight during re-contracting negotiations the fact that they never or rarely requested an investigator or expert to demonstrate how frugal they are with county funds.

Very few counties include social work services in juvenile representation. Where used, however, social workers assist with mitigation materials, records, experts, placement alternatives, and communication with clients, family, and probation officers.

III.E. Supervision and Monitoring of Workloads and Caseloads

Public defense attorneys have historically had high caseloads which impede their ability to provide quality services to more than a small percentage of their clients. In 2012 the Washington Supreme Court imposed limits to put an end to excessive caseloads. The Court adopted a Juvenile Court Rule³² requiring all court appointed attorneys to limit an annual full-time caseload to a maximum of 250 juvenile offender case assignments. Attorneys must file certification forms on a quarterly basis in each court in which they practice, swearing to their compliance with this rule. Similar requirements are in place for representation of adult clients. Attorneys with mixed caseloads must apply the caseload limits proportionately.

The Washington Supreme Court’s caseload limits have provided greater accountability for public defense attorneys, and have limited the potential for abusively high caseloads. However, enforcement of the caseload limits continues to be a concern. No formal mechanism is in place for attorneys that chose to ignore the rule, counties that assign excessive cases to attorneys, or for attorneys who are untruthful in their signed certifications. Certification forms are publically available, but are not made part of actual case records, and usually are not considered in appeals.

³¹ State v. A.N.J., 168 Wash.2d 91, 112-13 (2010).

³² Juvenile Court Rule 9.2.

The Supreme Court Standards also apply to adult criminal representation, and maximum annual caseloads are 150 for felonies, and 400 for misdemeanors. In juvenile offender cases, however, there is no distinction between case types. Statewide in 2015, an average of 37% of the juvenile offender cases filed were felonies. However by county, felonies ranged from 17% - 67% of juvenile court filings. The proportion of felony filings can be dependent on prosecutorial practices, availability of diversion programs, and other local factors.

III.F. Supervision and Performance Review Based on Standards

As with many aspects of Washington's county-based public defense system, supervision and performance review practices vary dramatically among the 39 counties. Most county and nonprofit public defense agencies comply with Principle Six, which requires supervision and systematic reviewing of juvenile defense staff. This is in sharp contrast to the lack of oversight that is provided to contract attorneys in all but few counties.

As a general rule, in most counties contract attorneys are not supervised or mentored by persons experienced with or specialized in public defense. Therefore, the quality of performance is highly dependent on contract attorneys' unchecked effort, experience, use of resources, and level of knowledge. In counties with public defense agencies, agency directors tend to have a strong awareness and understanding of contract attorneys' performance because the contract attorneys appear in court with staff attorneys. However, in most counties that rely primarily on contract counsel, contract administrators do little to evaluate attorneys' performance. Evaluation is often limited to word-of-mouth input from judges and prosecutors. Since defense attorneys should be advocating on behalf of clients' expressed interests, their actions run the risk of meeting disapproval of judges and prosecutors. As a result, contract public defense attorneys may not be investing sufficient time, resource, and effort into fully representing their clients.

In a few locations, however, counties with contract public defense systems employ experienced supervisory attorneys to oversee public defense services. Public defense professionals who are hired in such a capacity can bring their experience and knowledge to provide a more informed selection of attorneys and monitoring of performance.

Nineteen attorneys responding to the survey identified themselves as contract public defense attorneys. They represented a range of eleven counties. Twelve of them, representing ten counties, responded that they do not have performance evaluations

The Washington State Bar Association's Council on Public Defense is currently developing state performance guidelines for juvenile defense representation, consistent with national standards. Once developed and adopted, this document will be a useful tool for raising attorneys' performance. Further, counties should be educated and incentivized to include reference to the new performance guidelines in contracts for representation in juvenile offender cases. Additionally,

training must be offered to juvenile defense attorneys on the new performance guidelines to instill a common sense of mission and vision statewide.

III.G. Ongoing Training and Education

Training is widely recognized as a critical element to public defense practice, and has been codified in statute³³ and court rule.³⁴ Juvenile Court Rule 9.2(d)(1) requires courts to appoint lawyers in juvenile offender cases only if lawyers certify to the court that they comply with applicable Standards for Indigent Defense Services. Those Standards require that public defense attorneys “complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.”³⁵

From 2008 to 2015 the non-profit agency TeamChild was a statewide partner in Washington State’s Models for Change Initiative funded by the McArthur Foundation. As part of its activities, TeamChild funded and organized juvenile-specific training of several hours’ duration at the annual public defense training conference. Each year more than 50 juvenile defense attorneys attended the programs. The specific training programs taught by local and national experts were designed to stimulate interest in innovative research, trial skills and briefing to achieve better outcomes for juveniles. In the absence of funding, however, the program has not been sustainable. The number and frequency of juvenile specific trainings has significantly decreased.

OPD plans to offer an annual Juvenile Defense Training Academy. The multi-day sessions will be offered free of charge to both new and experienced attorneys. Instructors will utilize cutting edge adult learning techniques in highly interactive sessions. Attorneys will be awarded a certificate of completion at the end of the training. OPD is currently experimenting with web based technology to increase the availability of juvenile specific training. Although not viewed as a substitute for live training, the web based training will allow more defenders to access material. Both in-person and on-line options should be utilized so that training is accessible to attorneys in all corners of the state. As the State develops additional training opportunities, the list of attendees should be compared to the lists of contract juvenile defense attorneys submitted by counties to OPD in state grant applications. Notices about training opportunities should be sent directly to these attorneys. Further, counties should be encouraged to include contract language instructing that attendance at juvenile-specific training is mandatory.

³³ RCW 10.101.050.

³⁴ Juvenile Court Rule 9.2 (d)(1), Standard 14.1. (G).

³⁵ Ibid.

III.H. Advocacy for Independent Treatment and Disposition Alternatives

Principle Eight describes the obligation of public defense systems to present independent treatment and disposition alternatives to the court. Washington’s juvenile justice system is unique on a national basis because it employs a determinate sentencing scheme for juveniles. The Juvenile Justice Act of 1977 (JJA)³⁶ codified all the due process requirements of the *In re Gault* decision and set out presumed standard sentences for each crime, in a manner very similar to the state adult system.

Washington’s juvenile sentencing is the only juvenile justice system to use a presumptive, determinate sentencing scheme. The JJA includes a table factoring the seriousness of the offense and prior criminal history to establish a sentencing range of weeks to be served locally (up to 30 days) or in a state facility (greater than 30 days). A goal of this determinate sentencing scheme is to ensure that those who commit similar crimes and who have similar criminal histories receive substantially consistent sentences across the state.

In RCW 13.40.0357 the JJA provides for limited exceptions or alternatives to the standard range sentences. The most commonly used alternative, “Option D,” is most often referred to as a *manifest injustice*. The law allows the court to impose a sentence outside of the standard range if the court believes that a standard range sentence would result in a *manifest injustice*. Washington case law clarifies the use of *manifest injustice* sentencing alternatives to provide defenders with a process to argue for alternative sentences based on an individual examination of the juvenile’s role in the offense, treatment needs as determined by an evaluation or assessment, and a host of factors that may not be relevant to the sentencing of adults.” In addition to the statutory list of factors, other evidence may be considered in determining whether a standard sentence is needed to rehabilitate a juvenile offender and protect the public from criminal behavior.

Few judges venture outside the sentencing grid. In 2013 juvenile court judges sentenced offenders within the presumptive standard range 95.6% of the time. Of the 4.4% sentenced outside the range, 77.3% received a sentence that was higher than the standard sentence, and only 20.9% received a sentence below the standard range.³⁷

Juvenile public defenders are in need of training, resources, and support to effectively advocate for more appropriate sentences for their clients. They must also be better equipped to make appropriate records so that upward sentencing departures can be more effectively challenged on appeal. In order to serve juveniles’ rehabilitative needs, the juvenile defense bar needs to increase the utilization of sentencing advocates, social workers, and educational experts to testify on their clients’ behalf against standard sentencing schemes. Finally, the scope of representation by juvenile

³⁶ RCW 13.40

³⁷ 2013 Washington State Juvenile Disposition Guidelines Manual, Caseload Forecast Council, p. 276.

public defense attorneys should expand beyond disposition hearings, so they can continue to advocate for their clients' needs while they are serving sentences in state institutions.

III.I. Effective Advocacy for Educational Needs of Clients

Judges consider school as a primary factor in determining appropriate dispositions for youth. Strong attachment to a school or educational program will often sway a judge to impose a less punitive disposition. Failure or chronic absenteeism often is cited by judges as a reason to impose a harsher or more restrictive sentence. Few attorneys are trained in education law and consequently are unable or unwilling to advocate with school officials to readmit their client or to develop an individualized education plan, or to even modify a schedule. TeamChild, located in only five counties, provides attorneys trained in educational advocacy to work with defenders on their cases. TeamChild attorneys assist defenders by obtaining and interpreting school records, gaining readmission to a school or educational program, and explaining to the court the effect of a learning disability on a youth's behavior. TeamChild has demonstrated success in gaining readmission to school, reducing school suspension and expulsions and in reducing future court appearances for probation violations or new charges.

Advocacy for the educational needs and rights of juvenile clients is needed in many juvenile offender cases statewide. Yet this area is sorely overlooked and unaddressed. TeamChild's resources are limited; the expansion of their services to more juveniles in more counties should be supported. In addition more training opportunities should be developed for juvenile public defense attorneys so they can better understand, assess, and address clients' education needs. Increased awareness and advocacy can lead to stronger, more rehabilitative outcomes for their juvenile clients. Engagement with clients' educational needs and opportunities will enable defense attorneys to promote individualized probationary conditions incorporating education into disposition plans.

III.J. Promotion of Fairness and Equity for All Children

Racial and ethnic disparity (RED) in Washington juvenile courts has been firmly established with statistical studies spanning thirty years.³⁸ At both the state and county-levels, juveniles of color are inequitably overrepresented in arrests, referrals to juvenile court, diversion agreements, case filings, adjudications with JRA dispositions, and cases transferred to adult court.³⁹

³⁸ George S. Bridges, Ph.D. and Rodney L. Engen, "Racial Disproportionality in the Juvenile Justice System, King County, Final Report," 1993; Burns Institute, *Building Blocks for Youth* at www.burnsinstitute.org/?s=building+blocks; Juvenile Justice and Racial Disproportionality, Washington State Supreme Court, The Task Force on Race and the Criminal Justice System, March 28, 2012 www.modelsforchange.net/searchresults.aspx?q=racial+disparity+in+washington&subCol=mfc-publications

³⁹ The Washington State Center for Court Research conducted significant studies on racial and ethnic disparities in the juvenile justice system over a five year period (2007 – 2011). Statewide and county-level inequities were found

The determinate sentencing scheme adopted by the state in 1977 was designed to prevent a racial bias in sentencing of juvenile offenders. A goal of this determinate sentencing scheme is to ensure that those who commit similar crimes and who have similar criminal histories receive substantially consistent sentences across the state. The standard sentencing matrix does not include any racial or ethnic factors. The JJA also specifically bars a court from basing a sentence on factors such as race, gender, religion, and economic status.⁴⁰ Yet, youth of color are over-represented at every stage of a case from arrest to dispositions.

Juvenile public defense attorneys are not immune from racial bias, and their unconscious prioritization of clients based on race and ethnicity can significantly impact case outcomes.⁴¹ Bias could be affecting the quality of representation in a number of ways, including how hard a defender works on a case or what types of resolutions seem feasible. A public defense social worker described a review of her caseload, when she realized that it was disproportionately white. Defense attorneys had referred a disproportionate number of white youth for her services. If a defender does not refer a case to a social worker, it is less likely that sentencing alternatives will be developed. This type of consequence reinforces the need for defenders to receive training as to how to address their own and systemic biases in the justice system. Juvenile public defense attorneys also should be required to track data on time spent on cases, efforts for seeking sentencing alternatives, and dispositional outcomes, with data cross-referencing clients' demographic characteristics.

RED data is rigorously compiled by all county juvenile courts and the sophistication with which the data is analyzed surpasses any other form of analysis in the juvenile justice system. Trainings, symposiums, lectures are presented frequently on data, yet RED has increased at every stage over the years. Juvenile justice system stakeholders, including public defense attorneys, must move beyond mere problem identification. The time has come to select, implement, and evaluate effective strategies to reduce disproportional treatment of juveniles by race and ethnicity.

in juvenile arrests, referrals to juvenile court, diversion agreements, case filings, adjudications with JRA dispositions, and cases transferred to adult court. www.courts.wa.gov/wscrr/?fa=ccr.5yrAvg

⁴⁰ RCW 13.40.150.

⁴¹ *Public Defenders Can Be Biased, Too, and It Hurts Their Non-White Clients*, Jeff Adachi, The Washington Post, June 7, 2016; *Implicit Racial Bias in Public Defender Triage*, L. Song Richardson and Phillip Atiba Goff, The Yale Law Journal, June 2013.

IV. Strategies for Improving Juvenile Defense

Achieving meaningful and lasting improvements in the varied, locally-administered juvenile public defense systems throughout Washington will require sustained collaboration and support of juvenile justice system partners and stakeholders. Due to recent successful initiatives, stakeholders can benefit from ongoing momentum to ensure the right to counsel and improve quality representation for youth statewide. The strategies identified in this section were developed with the input, engagement, and collaboration of key juvenile justice system stakeholders at both the state and county levels. Most prominently, input came from the Juvenile Defense Improvement Group (see Appendix A), input from county-level juvenile justice stakeholders shared during site visit meetings (see Appendix B), and survey responses from statewide juvenile public defense attorneys (see Appendix C).

Assuming the availability of financial support from private, federal, state, county, and/or other funding sources, the following provides a blueprint of critical steps that should be taken to effectuate statewide juvenile defense reform.

IV.A. Juvenile Defense Workgroups to Address Statutes, Court Rules, Policies and Practices at the State and County Levels

State-Level Workgroup to Support Juvenile Public Defense: The Juvenile Defense Improvement Group identified that an important step towards reform would be convening an ongoing state level workgroup to promote improvements to juvenile public defense. Members could include high level policy leaders from the various fields that intersect with the juvenile justice system, and work could include developing state-level policies and practices, seeking new funding sources, advocating for statutory and court rule changes, and fostering cross-discipline education. The workgroup would be a key point of contact for other state level agencies, boards, commissions, and statewide non-governmental organizations working on juvenile justice matters.

Local Workgroups: Another key to juvenile defense reform is system-wide coordination at the county-level. Juvenile Court stakeholders including contract and staff public defense attorneys, judicial officers, prosecution, court staff, and probation should be encouraged to convene, support, and sustain juvenile justice system workgroups. As already demonstrated in some jurisdictions, county workgroups can act as a platform to address local ordinances, court rules, policies, and practices that impact the representation of youth. Additional topics they can address include: evaluation of county-based juvenile justice data to ensure that the local system is fair, non-discriminatory and rehabilitative; examination of the timing of appointment of counsel and delivery of initial discovery; review of indigency screening criteria and practices applied to youths' families; and resource availability for youth on civil issues collateral to court adjudications.

IV.B. Independent, Specialized Oversight of Contract Attorneys

Many counties contract with private attorneys and firms to provide juvenile defense representation. However, the county officials who administer the contracts have limited experience in effectively evaluating attorney performance, and identifying or developing system improvements. The following suggestions were aimed at supporting counties in their role of delivering public defense services, while ensuring that juveniles receive effective representation:

- Private, federal, state, local or other funding sources should be sought to support counties in taking steps to improve juvenile public defense practices, including the monitoring and oversight of contract public defense attorneys.
- The Washington State Office of Public Defense (OPD), in collaboration with local justice partners (public defense experts, county government association, and county legal advisors) should develop and conduct trainings for consulting attorneys who can provide counties with qualified, independent evaluation of contracted juvenile public defense services. These trained evaluators can periodically review local juvenile defense services and report their expert findings to the responsible county administrators and elected policy makers who otherwise often lack informed oversight of contracted public defense services.
- Using its authority under Chapter 10.101 RCW to gather data when awarding state grant funding, OPD should continue to collect and evaluate juvenile contract attorney compensation rates in comparison to adult felony contract rates, the frequency of turnover in juvenile contractors, and experience levels of juvenile contractor attorneys.
- OPD, in collaboration with local justice partners (public defense experts, county government association, and county legal advisors) should develop and provide training on best practices in the administration and oversight of contract public defense systems. These efforts could include a “toolkit” of new as well as existing OPD resources to help guide county administrators and elected county policy makers in ensuring that youth are provided effective defense independent from competing interests. Components could include best practice advisories on topics such as the adequate operational resources required for public defense attorneys, model complaint procedures, monitoring practices, and other useful topics

IV.C. Juvenile Public Defense Training

The Juvenile Defense Improvement Group, participants in county site visits, and surveyed public defense attorneys all agreed that more training should be available for the specialized practice of juvenile defense. There currently exist few training opportunities on juvenile defense practices, particularly for attorneys residing in rural and remote areas of the state. Furthermore, with the high turnover of juvenile defense attorneys, training should be provided on an ongoing, consistent basis.

- A collaboration of justice-system partners should develop a multi-day Juvenile Defense Training Academy for new and experienced juvenile defense attorneys in State and Tribal courts. Content should be based on the Juvenile Training Immersion Program (JTIP)

developed by the National Juvenile Defender Center, and include other topics critical to juvenile representation including, but not limited to:

- Trial skills
 - New developments in relevant law and procedure
 - National and state juvenile defense performance guidelines
 - Developmentally appropriate communication strategies
 - Racial and ethnic disparities
 - Cultural competence and implicit bias in representing youth of different backgrounds including tribal youth
 - Adolescent brain development
 - Understanding trauma and adverse childhood experiences (ACEs)
 - Civil consequences of juvenile adjudications
 - Education rights
 - Mental health
 - Treatment options and disposition alternatives
 - Effectively working with investigators, social workers, and civil legal aid attorneys
 - Preserving issues for appeal
- OPD should encourage counties to ensure that juvenile public defense attorneys attend the Training Academy as a requirement for their employment or contractual agreement.
 - A collaboration of justice-system partners should deliver periodic continuing legal education (CLE) courses in-person and via webinar on topics specific to representation of youth.
 - OPD should develop and deliver in conjunction with the Center of Indigenous Research & Justice⁴² a gathering of tribal juvenile defense attorneys and other tribal court stakeholders. The gathering would be an opportunity to provide training on current adolescent scientific studies, and share best practices from other tribal courts for rehabilitating youth.

IV.D. Individual Case Consultations and Technical Assistance

In many counties there are relatively few juvenile offender cases, resulting in only one or two attorneys contracted for this specific field of work. These attorneys commonly work in isolation, and do not have the benefit of teams, supervisors or experienced attorneys within their office to provide guidance on complex juvenile matters. Moreover, due to the high turnover in attorneys representing juveniles in offender cases, few attorneys stay in the field long enough to develop sufficient experience. State-level resources should be available to provide these attorneys assistance and guidance to ensure that they adequately represent their juvenile clients.

- OPD, with the support of other juvenile justice system partners, should seek funds to support an attorney position to provide individualized case consultation and expert technical assistance to juvenile public defense attorneys statewide, particularly contract attorneys. The technical

⁴² The Center of Indigenous Research & Justice (CIRJ) is a non-profit affiliated with the Native American Law Center at the University of Washington School of Law.

assistance attorney could be available on an on-call basis to provide case consultation to juvenile public defense attorneys who would be informed about and encouraged to use this resource.

- The technical assistance attorney should develop an online library of sample documents that public defense attorneys can access. Sample documents could include, but not be limited to: motions, briefs, affidavits, orders, requests for documents, and releases of information.
- The technical assistance attorney should develop an online library of practice advisories pertaining to representing youth in juvenile offender cases and in adult criminal cases. Practice advisories should include topics such as substantive juvenile law, adolescent brain development, mental health, advocating for alternative dispositions, education rights, record sealing, and advising clients on collateral consequences.
- The technical assistance attorney should keep data pertaining to each technical assistance request, for purposes of tracking current practices and areas in need of education.

IV.E. Expert and Ancillary Services

Quality juvenile defense services are not limited to just attorney representation. The participation of professionals such as investigators, social workers, and civil legal services help to ensure appropriate testing of the state's evidence, secure resources to address the root causes of criminal behavior, and eliminate obstacles to reentry. In fact, surveyed public defense attorneys responded that the most crucial improvement to reform juvenile public defense is to increase access to investigators, social workers, and experts as part of the defense team. Additionally, at county sight visit meetings, many attorneys stated that the lack of these services, as well as the absence of legal assistance with correlating civil matters, are the greatest impediments to meeting clients' needs.

- Training should be made available to social workers and investigators who work on juvenile public defense teams on topics such as:
 - Substantive legal differences in juvenile offender cases versus adult criminal cases
 - Developmentally appropriate communication strategies
 - Adolescent brain development
 - Obtaining records from medical and educational institutions
 - Identifying and engaging appropriate experts
 - Investigating social media
- A non-exclusive list of sentencing advocates, educational experts, investigators and social workers that are specifically trained in juvenile justice issues should be maintained and made available to juvenile defense attorneys statewide.
- Counties should employ or contract with social workers for enhancing defense representation of youth. Social workers' roles would include but not be limited to:
 - Finding alternative residential placement for clients
 - Obtaining medical, educational, and other records

- Finding appropriate experts
 - Enhancing communication with clients, family members, and other supportive adults
 - Addressing competency and capacity issues
 - Assembling mitigation materials for dispositional alternatives
 - Providing support as needed for successful completion of probation
- Many juvenile public defense attorneys, particularly those in contract systems, are accustomed to working in isolation with limited access to resources. To effectively implement the strategies identified in this section, juvenile public defense attorneys should have access to training on how to effectively incorporate other professionals into their defense practices.
 - To address the many consequences of juvenile adjudications that diminish the likelihood that current and former juveniles in offender cases will achieve their educational and employment goals, juvenile justice system partners, should seek funding to expand programs like TeamChild beyond their current capacity.

Appendix A – Juvenile Defense Improvement Group

The strategies and recommendations in this Plan were developed with the input of a diverse group of critical stakeholders. These individuals brought their experience, expertise, and vision to active and engaging strategy sessions on developing effective, well-resourced model juvenile indigent defense delivery systems.

The Juvenile Defense Improvement Group (JDIG) met in person three times and by webinar two times between January and May, 2016. Meetings were chaired by Justice Bobbe J. Bridge (ret.) of the Center for Children & Youth Justice (CCYJ) and meeting activities were facilitated Hickory Gateless, also of CCYJ. JDIG members were:

Frontline Contract and Agency Juvenile Public Defenders and Supervisors:

Sharonda Amamilo – Thurston County
Simmie Baer – Cowlitz County
Katherine Hurley – King County
Larry Jefferson – Thurston County
LaMer Kyle-Griffiths – King County
Megan Manlove – Spokane
Alex Navarez – King County
Jean O’Loughlin – Pierce County
Susan Sergiojan – Mason County

Judicial Officers:

Justice Sheryl Gordon McCloud, Washington Supreme Court
Commissioner Royce Moe (ret.)
The Honorable Ruth Reukauf – Yakima County Superior Court

Prosecutors:

Todd Dowell – Kitsap County Prosecuting Attorney’s Office
Dan Satterberg – King County Prosecuting Attorney

Law Enforcement:

Jim Pugel – Chief Deputy, King County Sheriff’s Office

Court Administration:

Misty Butler – Administrative Office of the Courts
Sharon Paradis – Benton-Franklin Superior Court Administrator (ret.)

Law Schools:

Kim Ambrose, University of Washington School of Law
Robert Boruchowitz, Seattle University School of Law
Paul Holland, Seattle University School of Law

State Agencies:

Sonja Hallum - Washington Department of Social and Health Services – Juvenile Rehabilitation
Kim Justice – Office of Homeless Youth Prevention and Protection
Kathleen Sande – Office of Superintendent of Public Instruction

Stakeholder Organizations:

Ann Danieli – Washington State Bar Association
Scott Hanauer – Community Youth Services
Jaime Hawk – American Civil Liberties Union of Washington
Christie Hedman – Washington Defender Association
Anne Lee – TeamChild
Travis Stearns – Washington Appellate Project
Eric Trupin – University of Washington School of Medicine
Theresa Wea – King County Superior Court Equity & Justice Advocate

Office of Public Defense:

Joanne Moore – Director
Sophia Byrd-McSherry – Deputy Director
George Yeannakis – Public Defense Services Manager
Katrin Johnson – Public Defense Services Manager

JDIG meetings were organized as follows:

In-person meeting: January 26, 2016:

- Review of juvenile defense reforms and current landscape
- Description of OJJDP grant requirements and expectations
- Identification of greatest areas of concerns in juvenile defense

In-person meeting: March 30, 2016:

- Summary of site visits
- Development of strategies to improve juvenile defense practices statewide

Webinar: April 13, 2016

- Further refinement on strategies for (1) access to counsel; and (2) scope of representation.

Webinar: April 15, 2016

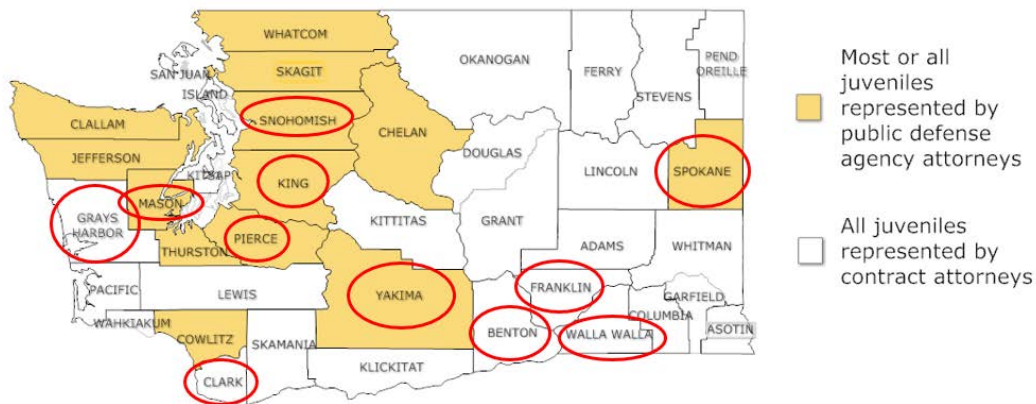
- Further refinement on strategies for (1) specialization of juvenile defense attorneys; (2) statewide resources to support juvenile defense; and (3) oversight and monitoring of contract juvenile defense attorneys.

In-person meeting: May 17, 2016

- Review of public defense survey
- Review of and refinement on strategies for improving juvenile public defense representation
- Identification of strategies to achieve sustained support and resources for reform strategies

Appendix B – County Site Visits

To further develop its understanding of current public defense practices in juvenile offender cases, between December 2015 and May 2016 the Washington State Office of Public Defense (OPD) conducted site visits with juvenile justice stakeholders in 11 counties, incarcerated males at a secure juvenile facility, and parents of juveniles. The counties visited represent the several different types of public defense delivery systems used in Washington. More than 100 individuals participated in the local meetings including contracted and agency-employed juvenile defense attorneys, judicial officers, prosecutors, court administrators, probation officers, court staff, detention administrators, county commissioners, parents, and juveniles. The counties visited are circled in red below:



Each discussion explored six topics: (1) access to counsel, (2) scope of representation, (3) defense specialization, (4) resources, (5) oversight, and (6) public defense involvement in developing policies and practices. Participants were also asked for their recommendations for how to improve juvenile defense.

Site Visit Locations, Discussion Participants

Benton and Franklin Counties

<p>Benton and Franklin Counties share a juvenile court. All juvenile offender cases are assigned to contract defense attorneys. Each county employs a public defense director/coordinator to oversee contractors' performance.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ■ 1 Director of Public Defense ■ 5 Contract Attorneys ■ 3 Judicial Officers ■ 1 Prosecutor ■ 1 Juvenile Court Administrator ■ 1 Legal Process Supervisor ■ 1 Intervention Services Manager ■ 1 Detention Manager ■ 1 Probation Manager
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Clark County

<p>Clark County has contract defense attorneys and employs a public defense coordinator to oversee contractors' performance.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 1 Indigent Defense Coordinator ▪ 5 Contract Attorneys ▪ 1 Judge ▪ 1 Prosecutor ▪ 1 Juvenile Court Administrator ▪ 1 JDAI Coordinator ▪ 2 Probation Counselors ▪ 1 Probation Manager ▪ 1 Psychologist
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Grays Harbor County

<p>Grays Harbor County has one primary contract defender for juvenile offender cases.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 1 Contract Attorney ▪ 1 Judge ▪ 1 Prosecutor ▪ 1 Juvenile Court Administrator
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King County

<p>King County has a county agency that primarily assigns juvenile offender cases to attorney employees. A minority of cases are assigned to contract attorneys. King County also has a local TeamChild office.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 2 Agency Supervisors ▪ 6 Agency Attorneys ▪ 1 Racial Disparity Project Supervisor ▪ 1 Public Defender for Disproportionality Research
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Mason County

<p>Mason County has a county agency with one employee directing juvenile defense with the aid of contracted defenders. The director represents juveniles in all non-conflict offender cases.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 1 Public Defense Agency Director ▪ 2 Judges ▪ 1 Juvenile Court Administrator ▪ 1 Detention Administrator ▪ 1 Juvenile Services Director
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Pierce County

<p>Pierce County has a county agency that primarily assigns juvenile offender cases to attorney employees. Pierce County also has a local TeamChild office.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 1 Senior Supervising Attorney ▪ 1 Lead Juvenile Attorney ▪ 2 Agency Attorneys
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Snohomish County

<p>Snohomish County has a non-profit agency that assigns most juvenile offender cases to attorney employees. Snohomish County also has a local TeamChild office.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ Deputy Director of Public Defense Agency ▪ 3 Agency Attorneys ▪ 1 Contract Attorney ▪ 1 TeamChild Attorney
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Spokane County

<p>Spokane County has two county agencies that handle juvenile offender cases. A very small number of conflict cases are assigned to contract attorneys. Spokane County also has a local TeamChild office.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 1 Chief Deputy Public Defender ▪ 4 Agency Attorneys ▪ 2 Judicial Commissioners ▪ 1 Juvenile Court Director ▪ 1 Court Investigation Unit Manager ▪ 1 Probation Manager
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Walla Walla County

<p>Walla Walla County contracts with two attorneys to represent juveniles on offender cases.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 2 Contract Attorneys ▪ 2 Judges ▪ 1 County Commissioner ▪ 1 Clerk of the County Board of Commissioners ▪ 1 Prosecutor ▪ 1 Assistant Director of the Juvenile Justice Center
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Yakima County

<p>Yakima County has a county agency that primarily assigns juvenile offender cases to attorney employees. A minority of cases are assigned to contract attorneys. Yakima County also has a local TeamChild office.</p>	<p>Discussion Group Participants:</p> <ul style="list-style-type: none"> ▪ 1 Public Defense Agency Director ▪ 2 Agency Attorneys ▪ 2 Contract Attorneys ▪ 1 TeamChild Representative ▪ 1 Former Juvenile Defense Supervisor ▪ 1 Former Public Defense Agency Director ▪ 1 Judge ▪ 1 Juvenile Court Administrator ▪ 1 Probation Manager ▪ 1 Courtroom Intake Officer
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Parents and Juveniles

<p>OPD met with parents and guardians of children who had been sentenced to a disposition alternative program for juveniles convicted of low-level sex offenses. Several of the parents and guardians included their children in the discussion. The counties listed indicate the county of their juvenile court involvement.</p>	<p>Counties of Participants’ Juvenile Court Convictions:</p> <ul style="list-style-type: none"> ▪ 3 Grays Harbor County ▪ 3 Thurston County ▪ 2 Lewis County ▪ 1 Cowlitz County ▪ 1 Probation Officer ▪ 1 Sex Offender Treatment Provider
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Green Hill School (Secure Juvenile Offender Facility)

<p>Green Hill School in Chehalis, WA is a medium/maximum security facility for adjudicated juvenile males.</p>	<p>Counties of Participants’ Juvenile Court Convictions:</p> <ul style="list-style-type: none"> ▪ Clallam ▪ Clark ▪ King ▪ Pierce ▪ San Juan ▪ Snohomish ▪ Spokane ▪ Whatcom ▪ Yakima
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Summary of Feedback by Topic Area

Access to Counsel

Pre-arraignment

- No public defense representation occurs until a formal appointment of counsel is made. A young person whose family can afford private counsel is likely to have early representation unlike an indigent client.
- In most counties the courts appoint counsel at the first appearance hearing. However several courts in smaller counties have a hearing where the youth is informed of the charges and counsel is technically appointed, but not present. It is possible for a young person to be taken into custody at these hearings, and warrants will be issued if the juveniles do not appear. In King County appointment occurs after charges are filed with the court.
- Prosecutors do not provide discovery materials to public defense counsel until after appointment of counsel is made. Since appointment does not typically occur until the first appearance hearing, defense counsel receive discovery after the case has commenced. Conversely, private counsel don’t face the same limitations.
- Parents expressed anxiety with having no counsel to explain things before the first appearance, and even then only getting a few minutes to talk before and after court.
- Youth rarely waive their rights to counsel. When a youth initially asks to waive counsel, such requests are either withdrawn or denied after further discussion with the court.

Post-disposition

- Post-disposition representation is typically limited to restitution matters and probation violation hearings.
- Adjudicated youth reported not knowing how or not feeling like they were allowed to contact their defense attorneys about their sentence to address questions and/or concerns.
- Parents/youth reported that most of the post-dispositional advice they got came from probation officers.
- Parents reported a lack of communication, particularly about mandatory registration for sex offenses, and the process, rights, and obligations related to juvenile record sealing.

Scope of Representation

- The scope of public defense representation is typically limited to defending the criminal charge.
- Juveniles are often represented by different attorneys in the underlying case, and in later probation violation hearings. Juvenile attorneys do not commonly continue to represent the juvenile client who is declined to adult court.
- Most public defense attorneys do not perceive representation on collateral consequences as part of their role. Where available, civil legal aid is relied upon for assistance. Where that is not available, most juveniles are left to fend for themselves.
 - TeamChild is a nonprofit agency with regional offices located in five counties. Staff attorneys provide legal representation to youth on civil legal issues such as education, government benefits, and housing, and assists with record sealing. Justice system partners said TeamChild’s legal services are effective in reducing juvenile court involvement and improving outcomes for youth.
- Some barriers to expanding the scope of representation include caseload capacity, lack of knowledge/training/experience, and inadequate compensation.
- Youth/parents reported wanting indigent representation earlier, feeling inadequately prepared for collateral consequences, and feeling abandoned because they cannot go back to their attorney for post-disposition help.

Specialization of Juvenile Defense Counsel

- Juvenile defense often seen juvenile court work as a “stepping stone” to gain experience for representing adults with felonies. There are high turnover rates.
- Turnover is also high among juvenile prosecutors and judicial rotations.
- Contract attorneys are usually paid less for juvenile offender cases than adult felony cases. Pay parity was often cited as a reason for not specializing in juvenile, particularly by contract defense attorneys. Pay parity is more common for agency-employed attorneys.
- Some public defense agencies require attorneys to rotate in and out of juvenile units, limiting opportunities to specialize.
- Many juvenile attorneys seek adult felony work so they can get jury trial experience and have promotional opportunities that do not exist in juvenile court assignments.

- There is little to no juvenile-specific training, particularly in Eastern Washington. In Western Washington juvenile-specific training is more prevalent but still inadequate.
- The lack of specialization appears to lead to fewer trials, fewer substantive motions, and limited alternative disposition advocacy.
- Communication:
 - Adjudicated youth and parents expressed extreme dissatisfaction with the quantity and quality of attorneys' communication. Several reported speaking with their attorney just a few minutes before and after court hearings.
 - Youth reported that their attorneys discussed legal issues, but not in terms or at a pace understandable to them.
 - Youth reported wanting to have their parents involved in significant case decisions and that that their attorneys refused to speak to parents.
 - Youth reported often being pushed into decisions without understanding why or what their options were.
 - Parents reported a lack of communication from their child's attorneys. They could not reach them easily and were often left in the dark about the process.

Resources for Juvenile Public Defense Counsel

- Contract defense attorneys reported having good access to investigators and experts, but the rate of usage is unclear.
- Agency-employed defenders reported having access to investigators and experts, but expressed frustration that sometimes these necessary resources are prioritized for adult felony cases.
- Very few counties provide funds for social workers on the defense team.
- Where social workers are used, they help to assemble mitigation materials, obtain records, increase client/family communication, find placement alternatives, address competency issues, collaborate with probation, provide an objective voice to the court, and develop alternative disposition plans. Where available, defense attorneys want increased access to independent social workers.
- Defense attorneys who do not currently use social workers expressed a strong desire to work with independent social workers on the defense team. In contrast, many judges, court staff, and probation officers saw that role as duplicative of the probation officer's.
- Few adult felony attorneys that represent youth in adult court consult with juvenile attorneys for their expertise on representing young clients.
- Many defenders reported being interested in having a juvenile-specific brief bank, a technical assistance support line/attorney, and the opportunity to access more juvenile-specific training.

Oversight of Performance of Juvenile Public Defense Attorneys

- Contract attorneys receive very little evaluation of the quality of their work. The people who provide most input on their performance is judges. County commissioners or county administrative staff tasked with overseeing public defense contracts generally are not attorneys and have little or no experience in criminal law, attorney ethics, or juvenile defense. They often rely on recommendations from judges when making attorney contract decisions.
- Contract attorneys are aware of the influence judges have on contracting decisions. They fear losing their contracts if they don't conform to judges' expectations.

Juvenile Public Defense Attorneys' Participation in Development of Local and System-Wide Policies and Practices

- Several counties have juvenile justice system meetings which include a variety of stakeholders including defense attorneys. These meetings are seen as a positive opportunity for discussion of local policies, practices and resources.
- Some counties have such meetings, but do not include defense attorneys. Other counties (particularly those with contract systems) expressed no desire to have such meetings.
- In the agencies where there is active system engagement, there also appears to be a higher level of zealous advocacy by public defense attorneys.
- In most instances, system-wide meetings address processes and procedure rather than strive to improve outcomes/opportunities for juveniles.
- In JDAI (Juvenile Defense Alternative Initiative) counties, there were disparities in public defense attorney involvement. In some counties public defense attorneys have a strong presence. In one county public defense attorneys had no idea what JDAI was.
- Invariably probation has a lot of influence over local process and case outcomes. In most counties probation is open to collaboration and offers what it believes to be supportive services.
- Having a good environment for open dialogue that involves all interested stakeholders is highly dependent on the culture in and among the different groups who might participate.

Recommendations for Improvement

- Establish training and orientation for new juvenile attorneys.
- Provide intensive training for attorneys new to juvenile defense in county and tribal courts.
- Provide training on adolescent development issues for the broader community involved in the juvenile justice system, not just the public defenders.
- Provide to public defense attorneys statewide technical assistance for juvenile offender and youthful offender representation.
- Empower juvenile defenders to advocate for alternatives to detention.
- Increase education and awareness around disproportionality issues within the juvenile justice system from arrest to disposition.

- Increase funds for investigators/experts.
- Increase attorney compensation.
- Where currently unavailable, introduce the use and support of independent social workers to the defense team.
- Increase access to interpreters.
- Increase resources for mental health support.
- Ensure JDAI counties are keeping up to date and in compliance with the JDAI program.
- Encourage cooperative relationship between probation, prosecution, and defense in order to help facilitate successful diversions and probation periods.
- Adequately staff juvenile defender offices/agencies, particularly in rural counties.
- Create more opportunities for youth to participate in know-your-rights seminars to help them understand their rights and to stop perpetuating the school to prison pipeline.
- Permit earlier access to public defense counsel, including provision appointment to allow juveniles to consult with attorneys as early in the process as possible.
- Provide opportunity for defense counsel to be involved before diversion agreements are deemed violated or probation violations are filed to allow youth an opportunity to get back on track.
- Reduce the number of probation violations filed to reduce caseloads and find new ways to encourage youth to remain in compliance with court orders.
- Establish (or re-establish) drug treatment courts for juveniles; replicate the drug court currently in place in Clark County.
- Establish mental health courts for juveniles.

Appendix C – Juvenile Public Defense Attorney Survey

The Washington State Office of Public Defense (OPD) conducted an anonymous survey of public defense attorneys who handle juvenile offender cases, for purposes of collecting more data on statewide and regional practices. Thirty-nine attorneys responded to the survey, representing 18 counties.

Description of Survey Respondents



Little or No Evaluation of Contract Attorneys

Of the 19 contract and list-appointed attorneys (from 11 counties), 12 do not have performance evaluations (from 10 counties). Of those who responded that some evaluation does occur, most contract in the same counties as respondents who report that no evaluation occurs.

Attorney Reports to Counties Regarding Caseloads and Activity

- 18 attorneys (10 counties) provide reports on **caseloads**
- 12 attorneys (8 counties) provide reports on **trainings** attended
- 10 attorneys (8 counties) provide reports on case outcomes
- 5 attorneys (2 counties) provide reports on **motions** filed
- 3 attorneys (3 counties) provide **time** reports
- 7 attorneys (7 counties) responded that they **do not provide any reports**

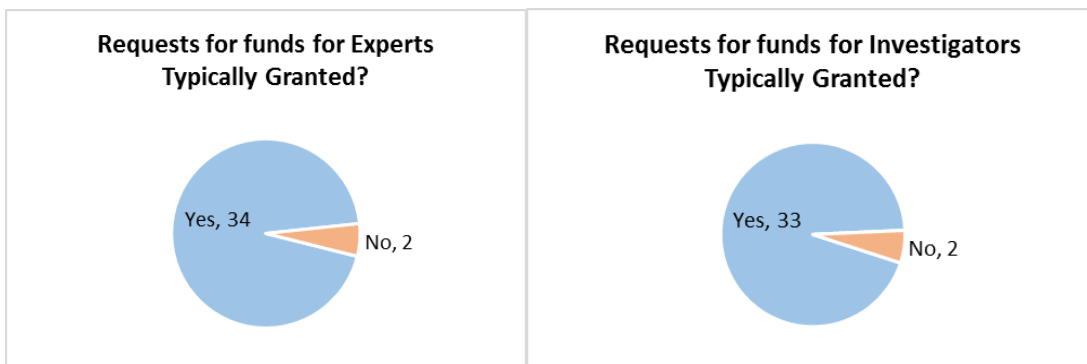
Lack of Pay Parity for Staff Attorneys

- Pay parity with **felony public defense** attorneys: Five staff attorneys (out of 12) representing three counties (out of seven)
- Pay parity with **juvenile prosecutors**: Seven staff attorneys (out of 12) representing four counties (out of seven)

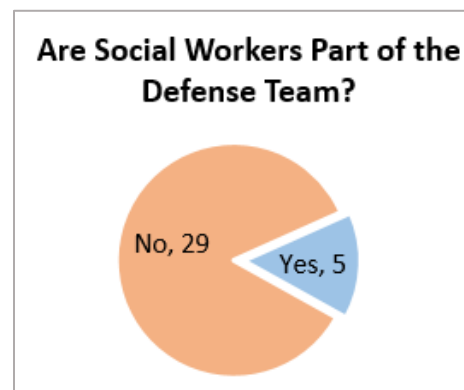
Counsel Provided to Juveniles

- Thirty-nine respondents reported that counsel is provided at **first appearance**.
- One county screens juveniles and parents for **indigency** prior to appointment.
- Thirty-three (out of 36) reported that counsel is never **waived**. Where waived, juveniles first consult with counsel.

Funds are Typically Granted for Experts and Investigators



Infrequent Use of Social Workers



Sample Comments on Social Workers:

- I wish we were allowed to do this, or paid enough to hire a "team" - it would be incredible and would go a long way in actually solving the issues we address as PDs, rather than just dealing with the immediate symptoms.
- We would love to do that; however, we are in a small rural area and have neither the availability of anyone to hire, nor any funding to so do.
- No procedure currently in place. It would be helpful where there are difficult placement issues and resource needs.
- There are very few if any such social workers in the area. It might be helpful but additional STATE funding would be necessary.
- I have requested funding for a social worker position from our county several times and have been refused.

Ranking of Suggested Improvements

Attorneys were asked to rank the following improvements in order of their priority. Overall results were the following:

1. Additional **funding for experts, investigators or social workers**
2. **Pay parity** with adult felony defenders
3. **Post-dispositional representation**, to include representation on collateral consequences (e.g. record sealing)
4. Juvenile-specific **training** on adolescent behavior and trauma-informed representation
5. **Pre-filing/charging access to counsel**

Greatest Strengths of Your Local Public Defense System – Sample Answers

- The progressive and collaborative approach to juveniles (San Juan)
- A very cohesive panel who helps each other out and supports each other, acting almost like a real PD organization (Benton/Franklin)
- Experienced defense counsel - Most have over 15 years of experience in juvenile defense, adequate access to investigators and experts (Clark)
- We have relatively few cases and can spend time going over details. We also generally know the respondent and their extended family and work cooperatively to assist both the respondent and their families. (Columbia)
- Training within DPD; ability to hire high-quality applicants because of salary and desirability of organization. (King)
- Juvenile supervisor with experience and a Director that supports keeping that supervisor in juvenile court. (Whatcom)
- In-house public defender in the juvenile courthouse, early stage representation. (Yakima)
- We are committed to taking juvenile matters to trial with proper investigation and expert witness support. (Thurston)

Greatest Challenges of Your Local Public Defense System – Sample Answers

- I am disappointed in some of the other juvenile defense attorneys' work ethic and wish there was more oversight. I am told this is going to change. (Benton/Franklin)
- Contract providers are stuck with no benefits and high overhead. (Clark)
- Limited assistance with resources outside of probation, limited assistance with post-disposition consequences. (Clark)
- Providing wrap-around services to the juvenile beyond representation in the criminal matter. (Cowlitz)
- Probably the lack of serious resources for social workers, etc. Continuing training--litigation skills is something that needs to improve as well. (Grant)
- Collaborating on a system-wide level to ensure that public defenders' needs are met to enable them to most effectively represent clients; less talk and more action on the

presumption that kids should not be detained unnecessarily; critical need for more engagement with community to address disproportionality. (King)

- Services for kids, money for experts, expertise in juvenile psych among the lawyers on both sides, institutional memory (people get shuffled around a lot) (King)
- Juvenile is seen as a stepping stone to adult felonies. Not a lot of resources are put into juvenile defense or defenders. (Spokane)
- Understanding the effects of unconscious bias and how that affects cases in court. This has all kinds of unseen consequences that result in people of color being unfairly treated the whole court system. (Thurston)