

WASHINGTON STATE  
OFFICE OF PUBLIC DEFENSE

# ANNUAL REPORT

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FISCAL YEAR 2008



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**OFFICE OF PUBLIC DEFENSE**

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## MISSION STATEMENT

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The mission of Washington State Office of Public Defense is to "implement the constitutional and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent defense services funded by the state of Washington." RCW 2.70.005.

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## INTRODUCTION

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The Washington State Office of Public Defense (OPD) is an independent judicial branch agency. Created by the Legislature in 1996, and permanently reauthorized in 2008, the agency works to ensure high quality legal representation by:

- implementing quality-control procedures for appointment of appellate attorneys and evaluation of indigent appellate attorney services;
- administering funds appropriated for court-appointed counsel in appellate cases and supporting the appellate cost recovery system through timely responses to requests;
- administering state funds to eligible counties and cities, and supporting efforts to improve the quality of trial-level indigent defense in Washington state;
- initiating and responding to legislative proposals and court rule changes;
- administering a state-funded Parents Representation Program; and
- providing information, special reports and recommendations to the Legislature, including an annual prioritized list of aggravated murder costs submitted by the counties.

The Washington State Office of Public Defense Advisory Committee, made up of state legislators and members appointed by the Governor, the Washington State Supreme Court Chief Justice, the Court of Appeals Executive Committee, and the Washington State Bar Association, oversees the activities of the agency. Senate Bill 6442, passed by the 2008 Legislature and signed by the Governor, permanently reauthorized OPD and expanded the OPD Advisory Committee by two seats. The bill, effective in fiscal year 2009, added one position each for representation from Washington State Association of Counties and the Association of Washington Cities.

During fiscal year 2008, the Advisory Committee conducted business at quarterly meetings in March, June, September and December, and met additionally by conference call as necessary to consider time-sensitive issues. The Advisory

Committee reviewed draft legislation and court rule proposals, adopted agency policies and procedures, provided oversight of the budget and agency programs, and resolved fiscal appeals pursuant to court rules.

Both the federal and state constitutions as well as state statutes guarantee the right to counsel for indigent persons in criminal cases and other cases involving basic rights, including dependency proceedings, parental rights terminations, criminal contempt convictions, and involuntary civil commitments. Indigent parties involved in these cases, in which their fundamental interests are at risk, are entitled to representation at state expense. Indigent defendants are also entitled to court-appointed representation for responses to state appeals and for motions for discretionary review and petitions for review that have been accepted by an appellate court, personal restraint petitions in death penalty cases, and non-death penalty personal restraint petitions that the court has determined are not frivolous.

In addition to improving the delivery of appellate level indigent defense in fiscal year 2008, OPD continued to expand its Parents Representation Program to a total of 25 counties. The program now covers two-thirds of counties across the state. OPD also continued working with concerned legal community leaders on critical issues regarding the delivery of trial-level criminal indigent defense in Washington state. The agency consulted with counties to identify and implement appropriate uses for state funds to improve public defense, provided Continuing Legal Education (CLE) programs throughout the state for local public defense providers, and continued three pilot programs designed to identify best practices for public defense in the trial courts.

OPD's original enabling statute, Chapter 2.70 RCW, included a sunset date for the agency of June 30, 2008. Senate Bill 6442, which passed the 2008 Legislature unanimously, removed the sunset date, permanently reauthorized the agency, and clarified its ongoing duties. Chapter 313, Laws of 2008.

The reauthorizing legislation implemented recommendations of the Joint Legislative Audit & Review Committee (JLARC), which conducted a statutorily required "sunset review study" of OPD to determine whether the agency should be terminated or reauthorized. The final JLARC report, published in January 2008, found that "OPD is meeting legislative intent, operating in an efficient and economical manner, with adequate cost controls in place, is meeting established goals and targets, and does not substantially duplicate services offered by other agencies or

the private sector.”<sup>1</sup> The report recommended that “The Legislature should repeal the sunset provision and permit OPD to continue without substantive modification,” and noted further that “The state would continue to have an obligation for the Constitutional guarantee of counsel, even if the Office of Public Defense were terminated.”<sup>2</sup>

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## AGENCY STRUCTURE

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During fiscal year 2008, the agency staff was composed of a director, a deputy director, an executive assistant, a fiscal analyst, a senior financial analyst, an administrative technical assistant, three public defense services managers, three parents representation managing attorneys, a parents representation social services manager, and two administrative assistants.

The public defense services managers and the parents representation managing attorneys develop and implement procedures to improve provision of defense services to indigent defendants in trial-level criminal proceedings and to indigent parents in dependency and termination proceedings. The social services manager implements procedures to improve social services to assist parents and their attorneys in dependency and termination proceedings.

In 2008, OPD began contracting with the Administrative Office of the Courts (AOC) for budget support services. An AOC budget manager works with OPD’s director and fiscal analyst to implement and manage the agency budget.

*The agency ensured quality indigent appellate services through the appellate appointment system, resources for appellate attorneys, and evaluations of attorney work products.*

**Appellate Appointments.** During fiscal year 2008, OPD worked with the Courts of Appeal to continue implementing the agency’s appointment system, including the Appellate Appointment Program, first initiated in 2005. Pursuant to court rule, the agency designates appellate attorneys for appointment by the courts in

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<sup>1</sup> Joint Legislative Audit and Review Committee, Office of Public Defense Sunset Review, Report 08-2, at 25, (Jan. 9, 2008). <http://www1.leg.wa.gov/JLARC/Audit+and+Study+Reports/2008/08-2.htm>

<sup>2</sup> Supra, at 2.

approximately 1,500 cases per year. In Division I, the Court makes rotating appointments to two OPD contract attorney firms. In Divisions II and III, the Courts appoint an OPD contract attorney designated for each individual case through the Appellate Appointment Program. Located at OPD, the system is accessible to the courts through a password-protected web page. Attorneys are selected in rotation based on their location, the case type, and the number of cases assigned in the current year and month. The Appellate Appointment Program continued to operate efficiently in fiscal year 2008, allowing OPD to monitor the program and ensuring that the courts were provided qualified and available attorneys in a timely manner.

**Resources for Attorneys.** OPD continued to add appellate briefs to the agency's on-line brief bank, which now includes a total of 10,234 briefs. This searchable collection allows attorneys to save time and improve the quality of their research. Attorneys throughout the state and around the nation have accessed the brief bank, and upon request, OPD has provided information to other states that are interested in setting up similar on-line resources.

OPD continued to encourage the use of electronic resources as well. The agency provides appellate contract attorneys with technical support and training updates on the use of the Judicial Information System (JIS). JIS is available to public defense attorneys at no cost through the Administrative Office of the Courts, allowing access to superior court and appellate court dockets. OPD also continued to work with attorneys and counties to encourage the use of electronic access to court files, which appellate attorneys must review to prepare their briefs.

During fiscal year 2008, OPD presented Continuing Legal Education (CLE) programs for appellate contract attorneys, including a two-day statewide conference in June. The covered topics included a moderated discussion of issues involved in accessing the case records necessary to develop an appeal, the observations of three former appellate judges on presenting persuasive briefs and oral arguments, and developments in sex predator cases on appeal. Ethics sessions focused on understanding the culture of poverty, and communicating effectively with clients living in poverty. Because many of the contract attorneys are sole practitioners who are geographically remote from other contract attorneys, CLEs provide unique opportunities to exchange information about current cases and build relationships for mutual support.

**New Payment System.** OPD implemented a more refined payment system for appellate work in FY 2008. Data analysis of the length of case transcripts indicated that a percentage of cases involve longer trials and transcripts over 300 pages in length, some up to 2,000 pages. OPD implemented a legislative increase by adjusting its flat fee payment schedule to routinely provide higher payments for longer cases (while continuing to pay extraordinary compensation for appropriate cases), ensuring

that attorneys handling more challenging cases are not disadvantaged under the payment system.

***The Parents Representation Program continued to improve practice standards, and was expanded to seven new counties.***

**Program Expansion.** The Parents Representation Program provides state-funded attorney representation for parents in dependency and termination cases. The program began as a pilot to improve standards for parents' representation in 2000 in Benton-Franklin and Pierce juvenile courts. After several positive evaluations of the pilot over a five-year period, the Legislature expanded the program to 10 counties in fiscal year 2006 and added another five counties in fiscal year 2007. The 2007-2009 biennial budget added seven more counties in fiscal year 2008, for a total of 25—two-thirds of the counties across the state.<sup>3</sup> Although the Legislature adopted a supplemental budget request to add Whatcom County to the Parents Representation Program in 2008, that item was among many legislative acts vetoed due to cost concerns.

For each expansion of the program OPD selected applications from interested courts according to need and availability of funds criteria, selected parents' attorneys in the counties through competitive solicitations, and then contracted with qualified attorneys for each juvenile court. New attorneys were required to attend an orientation program and provided desk books and other resources such as LexisNexis on-line research capability. To ensure effective establishment of the new program, OPD also communicated with local attorneys, judges, court staff, the Office of the Attorney General, the Department of Social and Health Services, and Court Appointed Special Advocate (CASA) programs during the implementation process.

**Program Structure.** Parents' attorneys follow enhanced practice standards developed by OPD during the program's pilot. These emphasize frequent communication with parent clients, careful case preparation, and vigilant oversight over parents' ability to access services ordered by the court. In addition, OPD makes limited social worker services available to program attorneys through contracts with program social workers, who work with individual parents as requested by attorneys.

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<sup>3</sup> The 25 counties are: Benton, Franklin, Chelan, Clallam, Clark, Cowlitz, Jefferson, Ferry, Stevens, Pend Oreille, Grant, Grays Harbor, Kittitas, Kitsap, Klickitat, Mason, Pacific, Pierce, Skagit, Skamania, Snohomish, Spokane, Thurston, Wahkiakum, Yakima.

The social worker component of the program efficiently supports both attorneys and parents by providing access to social work theory and resources available in the community, and by helping attorneys evaluate ways their clients can participate in their cases successfully.

The Parents Representation Program is managed by three experienced attorneys who implemented the program expansions in fiscal year 2008, conducted both formal and informal trainings, provided support and consultation for contracted program attorneys, and oversaw the program's contracts. A Social Services Manager oversaw the social worker component of the program by selecting experienced social workers and managing their contracts, conducting training, and providing resources and support.

**Training and Quality Management.** During fiscal year 2008, OPD conducted two statewide Parents Representation Program trainings for program attorneys and two regional conferences. Presentations were made on the impacts of poverty, ethics in representing parents, termination case representation, new legislative mandates and case law, and other relevant topics. Uniform, high-quality education is viewed as a critical step for improving practice standards.

OPD attorneys participated in a number of the state's child welfare policy committees and groups during fiscal year 2008, including the Court Improvement Program Committee, Catalyst for Kids, and the Birth Parent Advocacy Group. The OPD director is a member of the Washington State Supreme Court Commission on Children in Foster Care.

***OPD improved trial-level public defense by distributing state funds and consulting services to counties and cities, and providing training and resources to attorneys.***

**State Funds to Improve Public Defense.** In recent years, the public and all branches of government have become aware of urgent problems in trial-level public defense in Washington. The courts' Justice in Jeopardy initiative and Washington State Bar Association (WSBA) reports have consistently emphasized the state's duty to address chronic underfunding of public defense and a general lack of adequate oversight over much of the state's public defense system. In 2005, the Legislature passed SB 5454, a Justice in Jeopardy initiated bill, which created a new public defense program at OPD, and HB 1542, which amended Chapter 10.101 RCW to create a state funding process for improving public defense. Following an initial appropriation in 2006, the Legislature has continued funding the program at \$6 million annually. Public defense improvement funds are distributed to local jurisdictions by OPD under the program.

OPD conducted the second Chapter 10.101 RCW application process in fiscal year 2008, distributing each of the 38 participating counties' pro-rata share of state funds, calculated in accordance with a formula established in the statute. Pursuant to the statute, 10 percent of the appropriated funds were distributed to cities, which competed for grants pursuant to a separate OPD application process. Twenty-three cities applied and 14 were awarded grants.

During the 2008 legislative session, OPD sought but failed to secure additional state funding to specifically address public defense shortcomings in juvenile offender cases. More than one-third of the juvenile courts in the state were not consistently able to provide access to counsel at the first court appearance for children charged with crimes. In an effort to at least partially address this issue the Washington Supreme Court considered a rule to limit the ability of a child to waive his or her right to counsel without first having the opportunity to speak with an attorney. As of the end of the fiscal year, the Court had not yet adopted the rule. Nevertheless, with technical assistance from OPD, several counties had already begun to remedy the lack of counsel at juvenile first appearances.

In fiscal year 2008, OPD published the second annual *Status Report on Public Defense in Washington State*. This report compiles information reported by the counties in their Chapter 10.101 RCW state funding applications, as well as other statewide data, to describe Washington's public defense systems. Prior to the Chapter 10.101 RCW process, much of this information was not available in a comprehensive format. OPD plans to publish this document each year, providing an annual progress report on the public defense improvement efforts of the local jurisdictions and the state.

OPD participated in the courts' Justice in Jeopardy Initiative Committee. This Committee is co-chaired by Chief Justice Alexander and Judge Deborah Fleck, who co-chaired the Court Funding Task Force. Membership is made up of judges from all court levels, Washington State Bar Association representatives, private attorneys, court administrators, Equal Justice Coalition representatives, and others. The purpose of the Committee is to broaden awareness of the critical role of the judicial branch in maintaining the rule of law in a free society, and in protecting the rights and enforcement of obligations for all, as well as to pursue adequate, stable, long-term funding for the judicial branch. As the head of a judicial branch agency, the OPD director is an active participant.

OPD also actively participated in the WSBA Committee on Public Defense. The WSBA first appointed a committee to thoroughly analyze public defense problems and issues and make recommendations for reform in 2003, and has continuously maintained such a committee since then. In 2008 the Committee on Public Defense created recommendations and presented them to the WSBA Board of Governors,

who reauthorized the committee. The OPD director is a member and OPD staff participates in Committee meetings and projects.

**Resource Attorneys.** OPD's Public Defense Services Managers provide consultation services regarding public defense issues to local jurisdictions, among other tasks. During the year, they provided numerous in-person and telephone consultations to counties and cities upon request. By the end of the fiscal year OPD had planned or executed visits to all 14 cities that received state grant funding as well as to more than 20 counties.

In addition, OPD continued to contract with Washington Defender Association for resource attorney services during fiscal year 2008, pursuant to legislative directive and Chapter 10.101 RCW. Two attorneys are funded through this program to provide consultation and support to individual public defense attorneys who contact them about specific case issues. The resource attorneys each provided hundreds of consultations with individual local attorneys during the year.

**Training Program.** OPD expanded its regional training curriculum for trial-level public defense attorneys during fiscal year 2008. Many of Washington's public defense attorneys do not work in public defender agencies, but rather have contracts with jurisdictions to provide public defense. Most of these attorneys practice in remote geographic areas without professional supervision or access to locally available relevant Continuing Legal Education (CLE) programs.

When setting up the CLEs, OPD concentrated on outreach and providing high-quality programs. OPD communicated with jurisdictions to compile contact lists of all contract public defense attorneys in the various regions, and individually invited these attorneys to the CLE located closest to them. During fiscal year 2008 the agency presented one-day trainings in Vancouver, Wenatchee, Spokane, Yakima, Mount Vernon, and Olympia. Approximately 300 local public defense practitioners attended these programs, evaluating the CLEs as being high-quality and often noting their appreciation of the programs' local nature. The legislative allotment to OPD for training covers the cost of materials and CLE credits. These regional seminars help raise the quality of public defense practice and encourage networking among public defense practitioners.

**Pilot Programs.** Pursuant to legislative direction, in 2006 OPD established pilot programs in Bellingham Municipal Court, Thurston County District Court, and Grant County Juvenile Court, which continued in fiscal year 2008. The purpose of the pilot programs is to test the impacts of implementing the Washington State Bar Association's public defense standards in these courts.

Prior to the inception of the pilot programs, public defense attorneys in the three courts had caseloads far exceeding WSBA standards. Additional attorneys were obtained for each jurisdiction, bringing the caseloads of the municipal and district

court attorneys down to 400 cases per year, and the juvenile offender attorneys down to 250 cases per year.

During FY 2008, OPD worked closely with the jurisdictions to ensure that the gains achieved in the pilots would continue after their completion in June. Due to the significant positive impact of the public defense improvements initiated in the pilots, each jurisdiction has retained the program improvements, devoting Chapter 10.101 RCW state funding and additional county and city funding to that purpose.

The pilot programs will be independently evaluated in the fall of 2008, with a final report due from the evaluator in early 2009.

***OPD developed and submitted the 2008 Extraordinary Criminal Justice Costs Act prioritized list.***

The Extraordinary Criminal Justice Costs Act, RCW 43.330.190, allows counties which have experienced high-cost aggravated murder cases to petition for state reimbursement. Under the Act, OPD annually implements the petition process and submits a prioritized list to the Legislature. Pursuant to the statute, priority is based on the comparatively disproportionate fiscal impact on the individual county's budget.

In December 2007 King, Klickitat and Yakima counties filed petitions for reimbursement. OPD audited and verified costs claimed in these petitions, including costs for investigation, prosecution, indigent defense, jury empanelment, expert witnesses, interpreters, incarceration, and other allowable expenses. As required by the statute, OPD created a prioritized list in consultation with the Washington Association of Prosecuting Attorneys and the Washington Association of Sheriffs and Police Chiefs, and submitted the list to the Legislature, which granted reimbursements of \$48,000 to Klickitat County and \$141,000 to Yakima County.

***The agency processed 14,667 invoices in fiscal year 2008.***

During fiscal year 2008 OPD staff processed 14,667 invoices including attorney invoices, pro se transcript invoices, court reporter invoices, county clerk invoices, appellate court brief photocopying invoices, and administrative invoices.

Vendors continued to submit invoices on a timely basis pursuant to OPD's payment policies posted on the OPD website. The policies, instituted in fiscal year 2004, require timely submission of vendor invoices and proscribe penalties for late invoices. These changes have improved OPD's ability to forecast future budget

demands. Notwithstanding the policies, OPD's appellate funding requirements continue to fluctuate based on case filings, which vary for reasons beyond the control of OPD or its contract attorneys.

During routine operation, the agency in fiscal year 2008 also responded on a daily basis to requests for information and assistance from courts, attorneys, county officials, incarcerated persons, criminal defendants, and the public.

***OPD supported the appellate cost recovery system through rapid responses to cost summary requests.***

Under the Rules of Appellate Procedure, the appellate court determines the costs assessed to unsuccessful appellants. When an indigent defendant is unsuccessful on appeal, the appellate costs become part of the legal financial obligations that can be imposed by judgment. The rules require that a cost bill, prepared by the original prosecuting attorney, be filed with the appellate court within 10 days of the filing of an appellate decision terminating review. Prosecutors' offices forward requests for appellate case cost summaries to OPD. The agency responds within 24 hours in most cases. In fiscal year 2008, OPD answered 727 requests from prosecutors.

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## CONCLUSION

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OPD continuously seeks ways to improve the quality of its services and more fully meet its mandates of implementing the constitutional and statutory guarantees of counsel and ensuring the effective and efficient delivery of state-funded indigent defense services.

In the area of appellate services, OPD assisted contract appellate attorneys by expanding the OPD on-line brief bank, conducting Continuing Legal Education classes, and implementing a new payment system.

In the area of parents' representation, OPD implemented the Legislature's expansion of the program to two-thirds of the counties. Pursuant to the objectives of the 2008 Legislature, OPD provided training programs for program attorneys and social workers.

In the area of trial level public defense, OPD continued three pilot programs, provided resource attorneys, advised counties when requested regarding public defense contracting, conducted regional trainings for attorneys throughout the state, and enhanced programs to distribute public defense funding to counties and cities to improve the local delivery of public defense services.

Throughout fiscal year 2008, OPD worked with the legal community, the courts, and interested groups to improve trial level public defense and will continue to seek funding from the Legislature to improve public defense in Washington State.

## APPENDIX A

## CHAPTER 2.70 RCW

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### OFFICE OF PUBLIC DEFENSE

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#### Sections

- [2.70.005](#) Office of public defense established.
- [2.70.010](#) Director -- Appointment -- Qualifications -- Salary.
- [2.70.020](#) Director -- Duties -- Limitations.
- [2.70.030](#) Advisory committee -- Membership -- Duties -- Travel and other expenses.
- [2.70.040](#) Employees -- Civil service exemption.
- [2.70.050](#) Transfer to office of appellate indigent defense powers, duties, functions, information, property, appropriations, employees, rules, and pending business -- Apportionment -- Effect on collective bargaining.

**2.70.005 Office of public defense established.** In order to implement the constitutional and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent defense services funded by the state of Washington, an office of public defense is established as an independent agency of the judicial branch. [2008 c 313 § 2; 1996 c 221 § 1.]

**Findings -- 2008 c 313:** "(1) The legislature finds that the office of public defense:

- (a) Operates in an efficient and economical manner, with adequate cost controls in place;
- (b) Meets established goals and targets; and
- (c) Does not substantially duplicate services offered by other agencies or the private sector.

(2) Termination of the office of public defense would have substantial and wide-reaching ramifications on the court system in Washington state. The right to counsel is a constitutional right, and provision of counsel for indigent defendants is a government responsibility." [2008 c 313 § 1.]

**2.70.010 Director — Appointment — Qualifications — Salary.** The supreme court shall appoint the director of the office of public defense from a list of three names submitted by the advisory committee created under RCW [2.70.030](#). Qualifications shall include admission to the practice of law in this state for at least five years, experience in providing indigent defense services, and proven managerial or supervisory experience. The director shall serve at the pleasure of the supreme court and receive a salary to be fixed by the advisory committee. [2008 c 313 § 3; 1996 c 221 § 2.]

**Findings -- 2008 c 313:** See note following RCW [2.70.005](#).

**2.70.020 Director — Duties — Limitations.** The director shall:

- (1) Administer all state-funded services in the following program areas:
  - (a) Trial court criminal indigent defense, as provided in chapter 10.101 RCW;
  - (b) Appellate indigent defense, as provided in this chapter;
  - (c) Representation of indigent parents qualified for appointed counsel in dependency and termination cases, as provided in RCW 13.34.090 and 13.34.092;
  - (d) Extraordinary criminal justice cost petitions, as provided in RCW 43.330.190;
  - (e) Compilation of copies of DNA test requests by persons convicted of felonies, as provided in RCW 10.73.170;
- (2) Submit a biennial budget for all costs related to the office's program areas;
- (3) Establish administrative procedures, standards, and guidelines for the office's program areas, including cost-efficient systems that provide for authorized recovery of costs;
- (4) Provide oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas;
- (5) Recommend criteria and standards for determining and verifying indigency. In recommending criteria for determining indigency, the director shall compile and review the indigency standards used by other state agencies and shall periodically submit the compilation and report to the legislature on the appropriateness and consistency of such standards;

(6) Collect information regarding indigent defense services funded by the state and report annually to the advisory committee, the legislature, and the supreme court;

(7) Coordinate with the supreme court and the judges of each division of the court of appeals to determine how appellate attorney services should be provided.

The office of public defense shall not provide direct representation of clients. [2008 c 313 § 4; 1996 c 221 § 3.]

**Findings -- 2008 c 313:** See note following RCW [2.70.005](#).

**2.70.030 Advisory committee — Membership — Duties — Travel and other expenses.** (1) There is created an advisory committee consisting of the following members:

(a) Three persons appointed by the chief justice of the supreme court, who shall also appoint the chair of the committee;

(b) Two nonattorneys appointed by the governor;

(c) Two senators, one from each of the two largest caucuses, appointed by the president of the senate; and two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(d) One person appointed by the court of appeals executive committee;

(e) One person appointed by the Washington state bar association;

(f) One person appointed by the Washington state association of counties; and

(g) One person appointed by the association of Washington cities.

(2) During the term of his or her appointment, no appointee may: (a) Provide indigent defense services funded by a city, a county, or the state, except on a pro bono basis; (b) serve as a judge except on a pro tem basis or as a court employee; or (c) serve as a prosecutor or prosecutor employee.

(3) Members of the advisory committee shall receive no compensation for their services as members of the committee, but may be reimbursed for travel and other expenses in accordance with state law.

(4) The advisory committee shall:

(a) Meet at least quarterly;

(b) Review at least biennially the performance of the director, and submit each review to the chief justice of the supreme court;

(c) Receive reports from the director;

(d) Make policy recommendations, as appropriate, to the legislature and the supreme court;

(e) Approve the office's budget requests;

(f) Advise the director regarding administration and oversight of the office's program areas; and

(g) Carry out other duties as authorized or required by law. [2008 c 313 § 5; 2005 c 111 § 1; 1996 c 221 § 4.]

**Findings -- 2008 c 313:** See note following RCW [2.70.005](#).

**2.70.040 Employees — Civil service exemption.** All employees of the office of public defense shall be exempt from state civil service under chapter 41.06 RCW. [1996 c 221 § 5.]

**2.70.050 Transfer to office of appellate indigent defense powers, duties, functions, information, property, appropriations, employees, rules, and pending business — Apportionment — Effect on collective bargaining.** (1) All powers, duties, and functions of the supreme court and the administrative office of the courts pertaining to appellate indigent defense are transferred to the office of public defense.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the supreme court or the administrative office of the courts pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the office of public defense. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the supreme court or the administrative office of the courts in carrying out the powers, functions, and duties transferred shall be made available to the office of public defense. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the office of public defense.

(b) Any appropriations made to the supreme court or the administrative office of the courts for carrying out the powers, functions, and duties transferred shall, on June 6, 1996, be transferred and credited to the office of public defense.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a

determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the supreme court or the administrative office of the courts engaged in performing the powers, functions, and duties transferred are transferred to the jurisdiction of the office of public defense. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the office of public defense to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the supreme court or the administrative office of the courts pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the office of public defense. All existing contracts and obligations shall remain in full force and shall be performed by the office of public defense.

(5) The transfer of the powers, duties, functions, and personnel of the supreme court or the administrative office of the courts shall not affect the validity of any act performed before June 6, 1996.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law. [2005 c 282 § 12; 1996 c 221 § 6.]

## **APPENDIX B**



## Washington State Office of Public Defense Application for Public Defense Funding Pursuant to Chapter 10.101 RCW

**TO:** County Officials  
**FROM:** Joanne Moore, Director  
**DATE:** July 28, 2008  
**RE:** Procedure for applying for public defense funding for the 2009 calendar year

### Applying for public defense funding

RCW 10.101.050 allows counties to apply for a pro rata share of appropriated state funds to improve the quality of public defense services for juveniles and adults. Enclosed is an application for state public defense funds (the application is also available at [www.opd.wa.gov](http://www.opd.wa.gov)) and a table of the estimated pro rata share available to each county for calendar year 2009.

Please note that the estimated funding amounts for each county may differ somewhat from current funding amounts. Funding differences are due to a county's increase or decrease in felony filings in 2007 compared to 2006. Felony filings are a factor in the funding distribution formula established by RCW 10.101.070.

Completed funding applications are due September 10, 2008. The Washington State Office of Public Defense (OPD) will notify applicants of funding authorization by December 1, 2008 and will disburse funds no later than December 31, 2008. Application materials may be submitted as an email attachment or in hard copy. (No faxes please.)

Chapter 10.101 RCW requires that the funds be used to make appreciable demonstrable improvements in the delivery of public defense services. Attached to this application is an updated policy on allowable uses for the funding. It is anticipated that each county's use of these funds will ordinarily be determined in consultation with the county courts and public defense attorneys.

RCW 10.101.060 conditions eligibility for continued funding upon a county's efforts to ensure that well-qualified attorneys handle the most serious cases; that county contracts provide funding for court-ordered expert and investigator costs and for compensation as ordered by the court for extraordinary cases; and that counties set up a valid method for appointing conflict counsel. Most county public defense agencies and contracts already meet these requirements. OPD will continue working with counties in 2009 regarding compliance with Chapter 10.101 RCW's requirements.

Also please be advised that the Washington State Supreme Court recently adopted JuCR 7.15, a new court rule clarifying how a juvenile may waive the right to counsel in a juvenile offender proceeding. Counties not already implementing the requirements of JuCR 7.15 may use Chapter 10.101 RCW funding for this purpose.

For information regarding the improvement of public defense services or this application, contact OPD Public Defense Services Managers Kathy Kuriyama or David DeLong at [kathy.kuriyama@opd.wa.gov](mailto:kathy.kuriyama@opd.wa.gov) or [david.delong@opd.wa.gov](mailto:david.delong@opd.wa.gov).

County_____	Contact name/title_____
Mailing address_____	
Phone_____	Email_____

**NOTE:** Applications are due September 10, 2008. If for some reason the county needs additional time, please contact OPD to request an extension.

**1. In 2007, the county paid indigent defense expenses as follows<sup>4</sup>:**

5a. \$ _____	<b>512.81 – General Indigent defense</b>	For jurisdictions that only report under this sub-category, all costs as defined in 512.80. For jurisdictions that report in multiple sub-categories, only costs not otherwise provided for by case type should be reported in this category, such as civil contempt proceedings in child support and paternity actions.
5b. \$ _____	<b>512.82 – Adult Felony</b>	All costs associated with providing legal counsel and services for indigent adult persons charged with a felony offense in the Superior Court and juvenile offenders charged with a felony under a statutory decline or following a decline hearing in Juvenile Court. Additionally, costs arising from the following actions should be reported in this category: fugitive complaints; special inquiry proceedings; material witness proceedings; coroner inquest proceedings; hearings or proceedings on remand from appellate courts; personal restraint petitions; and habeas petition hearings in Superior Court where counsel is appointed.
5c. \$ _____	<b>512.83 – Adult Misdemeanor</b>	All costs associated with providing legal counsel and services for indigent adult persons charged with a gross misdemeanor or misdemeanor offense in a district or municipal court including the cost of RALJ appeals to Superior Court.

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<sup>4</sup> **BARS Code 512.80 defines Indigent Defense as follows:**

All costs associated with providing legal counsel and services for indigent persons in criminal, civil, and juvenile matters for which the provision of counsel at public expense is provided for by law. Costs to be included are attorney salaries and benefits of contract costs for conflict counsel fees, expert witnesses, investigators, psychological and other examinations, evidence testing, etc. Interpreter costs should only be included for non-court hearing related interpreter services or interpreter services not otherwise provided under the auspices of the trial court.

5d. \$ _____	<b>512.84 – Juvenile Offender</b>	All costs associated with providing legal counsel and services for indigent juvenile persons charged with a felony, gross misdemeanor or misdemeanor offense in Juvenile Court including motions to revise rulings by court commissioners in juvenile cases heard in Superior Court.
5e. \$ _____	<b>512.85 – Juvenile Dependency and Termination of Parental Rights</b>	All costs associated with providing legal counsel and services for indigent parents eligible for the appointment of counsel at public expense whose child(ren) are the subject of a dependency or termination of parental rights action in Juvenile Court. Costs associated with the appointment of an attorney to represent a child should be included in this category. Costs associated with the appointment of a guardian ad litem to represent the interests of a minor child should not be reported.
5f. \$ _____	<b>512.86 – Truancy, At-Risk-Youth, CHINS</b>	All costs associated with providing legal counsel and services for minor children named in a “BECCA case,” including at-risk-youth; child-in-need-of-services petitions; and truancy hearings.
5g. \$ _____	<b>512.87 – Civil Commitments – Mental Health/Alcohol</b>	All costs associated with providing legal counsel and services for indigent adults and minor children subject to mental health and alcohol commitment proceedings. This category also includes other miscellaneous commitments, e.g. infectious disease commitment petitions.
5h. \$ _____	<b>512.88 – Civil Commitments – Sexual Predator</b>	All costs associated with providing legal counsel and services for indigent adults subject to a sexual predator petition.
5i. \$ _____	<b>512.89 – Extraordinary Criminal Case Expenses</b>	All costs associated with providing legal counsel and services for indigent adults or juveniles charged with a crime in superior or juvenile court for which a jurisdiction may be eligible for reimbursement of expenses under the extraordinary criminal justice expense act (RCW 43.330.190).

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

\_\_\_\_\_

**1i. If the county paid for attorneys to represent children in juvenile dependency and termination of parental rights actions, please list the total spent for children’s representation. \$ \_\_\_\_\_**

**2. In 2007, attorneys providing indigent defense representation had the following caseloads:**

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

<b>2(a) Counties with public defender agencies.</b>	Number of cases assigned to public defender (see question 2i below)	Number of probation violations and other miscellaneous hearings assigned	Number of full-time equivalent public defenders	Number of cases assigned to conflict counsel	Average per attorney caseload, if available
Superior Court adult felonies					
District Court adult misdemeanors and gross misdemeanors (see question 2ii below)					
Juvenile Court offender cases					
Juvenile Court dependency/termination cases					
“Becca” cases (truancy contempt, at-risk youth, CHINS)					

2i. How does the court count case assignments when an attorney withdraws from a case before the case is completed and later another attorney is appointed? For example, if the appointed attorney withdraws because the defendant has disappeared and a warrant is issued, and later the defendant returns and another attorney is appointed, does this get counted as two cases? \_\_\_\_\_

2ii. Does the District Court contract with one or more municipal courts? Yes ( ) No ( ) If yes, are the municipal court cases included in either of these charts? Yes ( ) No ( )

Fill in section 2(b) if the county contracts with private attorneys/firms for public defense services or if public defense attorneys are appointed by the court from a list.

<b>2(b) Counties with contract or list-appointed public defense attorneys</b>	Number of cases assigned to public defense attorneys(see question 2i above)	Number of probation violations and other miscellaneous hearings assigned	Number of attorneys with public defense contracts (or on court’s appointment list)	Average per attorney caseload, if available
Superior Court adult felonies				
District Court adult misdemeanors and gross misdemeanors (see question 2ii above)				
Juvenile Court offender cases				
Juvenile Court dependency/termination cases				
“Becca” cases (truancy contempt, at-risk youth, CHINS)				

3. If the county has public defense contracts, complete the Table of Public Defense Contracts (Table I), and provide a copy of each current contract in alphabetical order by attorney name. (If

possible, please provide scanned copies of contracts, by CD or email attachment. Hard copies are acceptable.)

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

5. Does the county require attorneys who provide public defense services to annually attend OPD-approved training at least once a calendar year? Yes ( ) No ( ) (In addition to numerous eligible trainings provided by a variety of organizations, OPD sponsors several CLEs each year. Details are available at www.opd.wa.gov.)

6. Does the county require all private attorneys who contract to provide public defense services to report all of their public defense contracts and “hours billed for nonpublic defense legal services...including number and types of private cases?” (RCW 10.101.050) Yes ( ) No ( ) If no, please explain the situation. \_\_\_\_\_

7. Has the county adopted or recently updated a public defense ordinance as required by RCW 10.101.060? Yes ( ) No ( ) If yes, please attach. If the county has not adopted a public defense ordinance, please explain. \_\_\_\_\_

8. Copies of all current public defense contracts are attached to this application. Yes ( ) No ( ) If no, please explain why they are not attached. \_\_\_\_\_

9. Please indicate how the county used its Chapter 10.101 RCW funds in 2008, and how the county’s 2009 funds will be used: (The table below reflects the most common uses of funds. See the attached policy for a complete list of allowed uses.)

Category	2008	2009
Creating a county or regional public defense agency		
Providing quality monitoring by an attorney coordinator who can act as a legal supervisor for contract attorneys providing public defense		
Adding attorneys to lower public defense caseloads		
Adding investigator services		
Adding expert services		
Increasing public defense attorney compensation		
Providing public defense services at first appearance calendars		
Providing interpreter services for attorney-client interviews and communications		
Other (please explain) _____		

10. Does the county designate a person or office to receive and investigate complaints about public defense services? Yes ( ) No ( ) If yes, please provide the name and contact information for the person/office. \_\_\_\_\_

11. Does the Superior Court administer any criminal specialty courts (for example, drug court or mental health court)? Yes ( ) No ( ) If yes, what type(s) of specialty court(s)? \_\_\_\_\_

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12. Does the District Court administer any criminal specialty courts (for example, mental health court or drug court)? Yes ( ) No ( ) If yes, what type(s) of specialty court(s)? \_\_\_\_\_

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13. Does the county offer any adult diversion programs? Yes ( ) No ( ) If yes, describe the diversion program(s). \_\_\_\_\_

14. Does the Superior Court routinely provide a public defense attorney to represent indigent defendants at:

- a. In-custody first appearance calendars? Yes ( ) No ( )
- b. Out-of-custody first appearance calendars? Yes ( ) No ( )
- c. If a defendant requests counsel at the first appearance calendar, is the case continued pending appointment? Yes ( ) No ( )

15. In juvenile offender matters does the Juvenile Court routinely provide a public defense attorney to represent indigent juvenile defendants at:

- a. Every in-custody initial appearance? Yes ( ) No ( )
- b. Every out-of-custody initial appearance? Yes ( ) No ( )
- c. If a juvenile requests counsel at initial appearance, is the case continued pending appointment? Yes ( ) No ( )

16. Does the District Court routinely provide a public defense attorney to represent indigent defendants at:

- a. In-custody first appearance calendar?
- b. Out-of-custody first appearance calendars?
- c. If a defendant requests counsel at the first appearance calendar, is the case continued pending appointment? Yes ( ) No ( )

17. Certification

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Place





**Washington State Office of Public Defense**  
*Chapter 10.101 RCW Estimated County Funding Distribution 2008*  
*For Use During Calendar Year 2009*

	2007	2007	Total
County	Population	Filings	Distribution
Adams	17,600	228	\$28,228
Asotin	21,300	220	\$29,334
Benton	162,900	1,260	\$143,377
Chelan	71,200	783	\$79,995
Clallam	68,500	589	\$68,539
Clark	415,000	2,365	\$306,629
Columbia	4,100	30	\$12,088
Cowlitz	97,800	1,671	\$138,331
Douglas	36,300	259	\$37,622
Ferry	7,550	47	\$14,422
Franklin	67,400	504	\$63,553
Garfield	2,350	23	\$10,990
Grant	82,500	804	\$85,792
Grays Harbor	70,800	666	\$73,594
Island	78,400	319	\$58,248
Jefferson	28,600	224	\$32,569
King	1,861,300	10,976	\$1,364,268
Kitsap	244,800	1,794	\$205,740
Kittitas	38,300	347	\$43,140
Klickitat	19,900	157	\$25,397
Lewis	74,100	900	\$87,431
Lincoln	10,300	52	\$15,827
Mason	54,600	613	\$64,063
Okanogan	39,800	383	\$45,679
Pacific	21,600	280	\$32,656
Pend Oreille	12,600	88	\$18,698
Pierce	790,500	6,477	\$681,217
San Juan	15,900	54	\$18,252
Skagit	115,300	1,352	\$128,575
Skamania	10,700	114	\$19,297
Snohomish	686,300	3,900	\$500,746
Spokane	451,200	4,841	\$453,568
Stevens	43,000	283	\$41,675
Thurston	238,000	2,287	\$229,199
Wahkiakum	4,000	52	\$13,219
Walla Walla	58,300	465	\$57,708
Whatcom	188,300	1,871	\$186,454
Whitman	42,700	240	\$39,259
Yakima	234,200	2,881	\$259,281
<b>Total</b>	<b>6,488,000</b>	<b>50,399</b>	<b>\$5,714,658</b>

Note: The estimated 2009 funding amounts for each county may differ from current funding amounts. Funding differences are due primarily to a county's increase or decrease in felony filings in 2007 compared to 2006. Felony filings are a significant factor in the funding distribution formula established by RCW 10.101.070.