



**Snohomish County
Auditor's Office**
Performance Audit Division

PUBLIC DEFENSE STUDY

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GAS COMPLIANCE STATEMENT

This study was performed in compliance with Government Auditing Standards 2003 (GAS) for performance audits as set forth by the Government Accountability Office (GAO).

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this study were to review the financial impacts on Snohomish County in providing mandated public defense services for indigent Snohomish County citizens from 2002 to 2005. We used the following methods to gather this data:

- Analysis of the indigency screening process
- Interviews with Snohomish County department heads, judges and key staff from the Office of Public Defense (OPD), Public Defender Association, Superior Court, District Court, County Clerk, Department of Information Services, Prosecutor's Office, County Executive's Office, Finance Department, and the King County Office of Public Defense
- Analysis of budgets and other financial documents
- Review of other local jurisdictions' approaches to public defense¹
- Evaluation of the current contracts used to provide public defense services
- Review of applicable local, state and federal regulations
- Assessment of public defense standards and best practices

We were unable to analyze the entire public defense system in Snohomish County for this study.² There are some limitations of the Performance Audit Division in regard to the courts; current interpretation of Snohomish County Code dictates that we may not audit specific court functions unless invited to do so. A letter sent by the Presiding Judge of Superior Court, stated, "we are sensitive to the independence of the court as a separate branch of government, and of not establishing a precedent that would suggest that audits of our operations by your office are appropriate or acceptable." Any data used in this report pertaining to public defense services for juvenile and dependency cases provided by Superior Court was offered as context only.

This study of public defense in Snohomish County was requested by a member of County Council and approved by the Performance Audit Committee. The request was a result of the concerns over the escalating financial impacts of

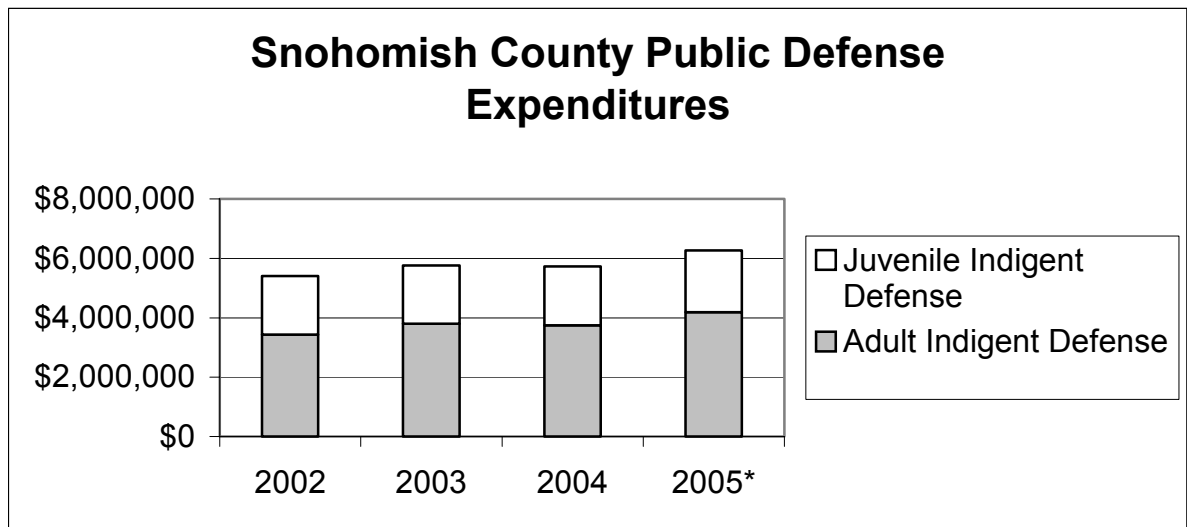
¹ We reviewed the public defense systems of King County, City of Seattle, and Pierce County.

² See Appendix A for a diagram of Snohomish County's Public Defense System.

providing public defense in Snohomish County represented in Figure 1. In addition, this study may be used by the County to further demonstrate the necessity for increased state funding.

Figure 1

		Snohomish County Public Defense Expenditures*					
		2002	2003	2004	2005		
Juvenile Indigent Defense		\$1,967,225	\$1,966,348	\$1,976,235	\$1,970,500		
Adult Indigent Defense		\$3,435,445	\$3,796,639	\$3,752,216	\$4,190,725		
Totals:		\$5,402,670	\$5,762,987	\$5,728,451	\$6,161,225		



*2002 – 2004 Snohomish County budget actuals, 2005 adopted. Includes contracted indigent defense services only.

Analyzing the quality of Snohomish County’s public defense system was not part of the scope of this study. OPD tracks an array of data that describes the volume and type of work that is performed from year to year in the public defense arena. A Harvard University paper entitled, “What Policymakers Need to Know to Improve Public Defense Systems”, acknowledges what is harder to quantify are the broader outcomes derived from an effective, efficient and economical public defense system that:

- Guarantees the constitutional right to an attorney,
- Increases the effectiveness of the justice system overall,
- Adds legitimacy to the judicial process,
- Protects against crimes committed by the state, and
- Contributes to the quality of criminal justice policymaking³.

³ For a discussion on public defense outcomes see, “What Policymakers Need to Know To Improve Public Defense Systems, by Tony Fabelo, Harvard University, Kennedy School of Government, December 2001.

SUMMARY OF RESULTS

Snohomish County can expect the cost of providing indigent defense services to rise in the coming years as its population continues to increase. Taxpayers should only pay for the costs of public defense services for those who are truly indigent, while those who can afford to pay should do so. With this in mind, there are a number of recommendations we support that could improve the overall efficiency and effectiveness of the Office of Public Defense. These recommendations and the rationale behind them are discussed in further detail in the Focus Issues and Recommendations section.

- The state of Washington should increase its level of funding to counties for public defense services to help meet the growing financial burden.
- By improving the eligibility screening process, Snohomish County can utilize taxpayer dollars more wisely.
- Increasing revenue and improving cost efficiencies is possible by evaluating current contracts, examining fees charged and modifying program policies.
- The current OPD staffing level makes it difficult for the department to perform its duties and responsibilities, and may impede their ability to institute potential cost saving initiatives.
- Elevating OPD's profile and allowing the department to have a stronger policy voice may help improve the criminal justice system overall.

Based on our evaluation we have determined that OPD and its contractors understand their mission and take pride in providing quality public defense services for the County. We were impressed with the level of professionalism exhibited by the OPD staff and management. There is always room for improvement in any organization, and OPD is no exception. This study highlights the facts regarding the current system and looks for ways in which to make the delivery of public defense services more economical, more efficient and more effective.

INTRODUCTION

The Sixth Amendment of the United States Constitution and Article I, Section 22 of the Washington State Constitution guarantee assistance of counsel to every citizen accused of a matter where loss of liberty is possible. The Revised Code of Washington further states:

...effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches. – RCW 10.101

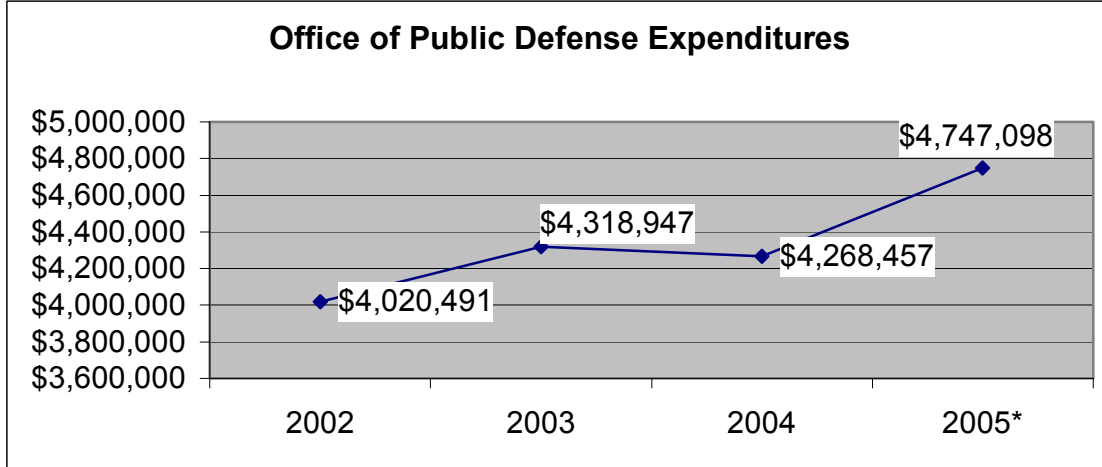
In addition, Chapter 2.09 of the Snohomish County Code established the Office of Public Defense along with its roles and responsibilities.⁴ The Office of Public Defense is also guided by the Washington Defender Association (WDA) Standards for Public Defense Services.⁵

OFFICE OF PUBLIC DEFENSE EXPENDITURES AND REVENUES

Expenditures

In 2005, the total adopted budget for the Office of Public Defense is \$4,747,098. Of that amount, \$3,277,133 is the estimated contract amount for the Snohomish County Public Defender Association, \$966,884 is estimated for Conflict Counsel and other legal services, and the remaining \$503,081 is for OPD administration.

Figure 2



*Snohomish County FY 2002 – 2004 = Budget Actuals, FY 2005 = Adopted Budget

For an analysis of how Snohomish County's expenditures on public defense compares with King County, see Appendix C.

⁴ A summary of federal, state and local provisions concerning the right to counsel appears in Appendix B.

⁵ <http://www.defensenet.org/resources/WDAstand.htm> WDA is an organization committed to improving the quality of the criminal defense bar in Washington state. These standards were endorsed by the Washington State Bar Association in January, 1990.

Revenues/Cost Recovery

OPD recovers costs and collects revenue from a variety of sources:

- Screening Fees
- Promissory Notes
- State Reimbursements for Sexual Predator Cases
- Municipal Contracts for Indigency Determination
- Superior Court Public Defense Recoupment

Figure 3 illustrates the yearly revenue attributed to OPD from the programs and initiatives listed.

Figure 3⁶

Public Defense Cost Recovery/Revenue

Program*		2002	2003	2004	2005
Promissory Notes		\$68,249	\$69,319	\$96,822	\$85,000
City Interviews		\$0	\$59,170	\$26,240	\$30,000
Superior Court Recoupment		\$99,884	\$88,259	\$60,829	\$93,375
Sexual Predator State Reim.		\$199,770	\$132,845	\$245,422	\$164,488
Screening Fee		\$0	\$0	\$0	\$13,206
Total		\$367,903	\$349,593	\$429,313	\$386,069

*The budget data was supplied by OPD. Though the yearly totals align with the County's financial system (Cayenta), a number of program totals are quite different. The County's financial system combined certain line items and placed some revenue dollars in different line items. For example, in 2002, the revenue line item for city interviews and sexual predator reimbursement were combined in the County's system. See Focus Issue #3 for further discussion on this matter.

OFFICE OF PUBLIC DEFENSE – ROLES AND RESPONSIBILITIES

The primary functions of OPD are to:

- provide pre-trial services
- determine eligibility for representation at public expense
- assign counsel and administer public defense contracts

Providing Pre-Trial Services

Within 24 hours of entering Snohomish County Jail inmates are interviewed by OPD's pre-trial services personnel who recommend whether the accused should be released from custody pending trial. Two interviewers arrive at the jail Monday through Friday and one on Saturday mornings in order to process, verify and report the information they obtain to the court, prosecutor and defense. Judges use this information to make jail release decisions.

⁶ 2002 – 2005 Revenue data collected from OPD and Finance Department.

Determining Eligibility for Representation at Public Expense

When a person is accused of committing a criminal offense and meets strict financial requirements, they are then entitled to receive representation at public expense.⁷ It is the screener's job to determine who is and who is not eligible for public defense services.⁸

The screeners conduct a thorough face-to-face interview for each case, requesting detailed information from the defendant comparing their income/assets with their expenses/liabilities.⁹ In 2005, OPD began collecting a \$10 screening fee from individuals applying for a public defender. The fee is only collected from those who have the ability to pay. No one is denied counsel due to their inability to pay the screening fee.

Upon completion of the interview, the screener then determines whether a person is indigent, indigent but able to contribute or not eligible. Figure 4 illustrates the number of screenings conducted and the percentage breakdown of their financial status.

Figure 4¹⁰

OPD INDIGENT SCREENING RESULTS				
	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Indigent Screenings Conducted	9,711	11,034	10,691	1,531
Indigent	88%	89%	85%	85%
Indigent/Able to Contribute	4%	4%	6%	6%
Not Eligible	7%	6%	9%	9%

Even when a person is receiving a presumptive eligibility type of income (i.e. Social Security Insurance - SSI), OPD screeners take the position that at any time a person's income or assets could change via inheritance, lotto winnings, gifts, health status, etc. An OPD screener stated that if these questions were not asked as part of a comprehensive interview, a person may be appointed counsel who does not qualify.

When a defendant is determined to be indigent, public defender services are provided at public cost. Figure 5 shows a comparison of the indigency rates for Snohomish, King and Pierce counties.¹¹ Poverty rates among the three counties

⁷ Appendix D lists the ways in which the accused is made aware of the services provided by the Office of Public Defense.

⁸ Appendix E contains a diagram of the indigency screening process.

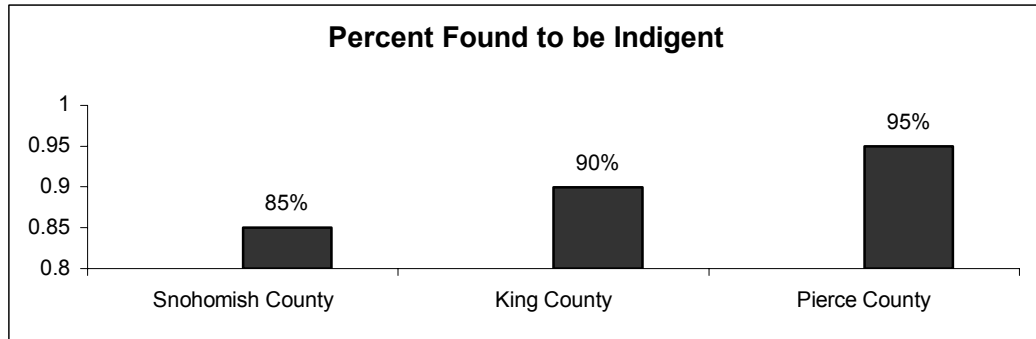
⁹ Appendix F contains a definition of "indigent" as defined by the Revised Code of Washington and a sampling of the types of information collected on the "Determination of Indigency" form.

¹⁰ Data supplied by Snohomish County OPD, 2005 data collected through Feb. '05.

¹¹ Pierce County Pre-Trial Services, Pierce County Performance Audit Committee, November 2004 and King County Public Defense Study, July, 2000, The Spangenberg Group

are 8.5%, 8.3%, and 9.8% respectively. This data may indicate that Snohomish County screeners are thorough in their indigent determinations.¹²

Figure 5



Promissory Notes

When defendants are determined to be indigent but able to contribute, a Promissory Note¹³ is signed. The defendant can either pay in a lump sum or can arrange a payment plan. Defendants pay a standard fee of \$200 for a misdemeanor case or \$835 for a felony case. Collecting on Promissory Notes is the responsibility of OPD; however, delinquent accounts are referred to a collection agency.

Assigning Counsel and Administering Public Defense Contracts

Once the defendant has been declared indigent or indigent but able to contribute, OPD then assigns counsel. The Office of Public Defense uses three primary sources for public defense services:

- Snohomish County Public Defender Association (PDA)
- Conflict Counsel
- OPD Attorney Administrator

Snohomish County Public Defender Association

Since 1973, the Snohomish County PDA has been providing comprehensive public defense services for adult indigent offenders (and minors charged in District Court) accused of committing criminal misdemeanors and felonies. They provide legal defense in each of the four divisions of District Court and in Snohomish County Superior Court.

A majority of those interviewed expressed complimentary opinions about PDA. One prosecuting attorney stated that it was his “strongly held opinion that by far the most efficient thing for the entire criminal justice system is good, well compensated and adequately staffed public defenders.”

¹² www.ers.usda.gov/data/povertyrates

¹³ A written promise to pay at a fixed or determinable future time a sum of money to a specified individual or to bearer.

Prior to 2005, OPD contracted for public defense services with PDA on a per case basis (\$200/misdemeanor and \$835/felony). In 2004, the rising costs of standard overhead combined with a significant and unforeseeable fluctuation in caseload numbers forced PDA to lay off attorneys in order to decrease costs.

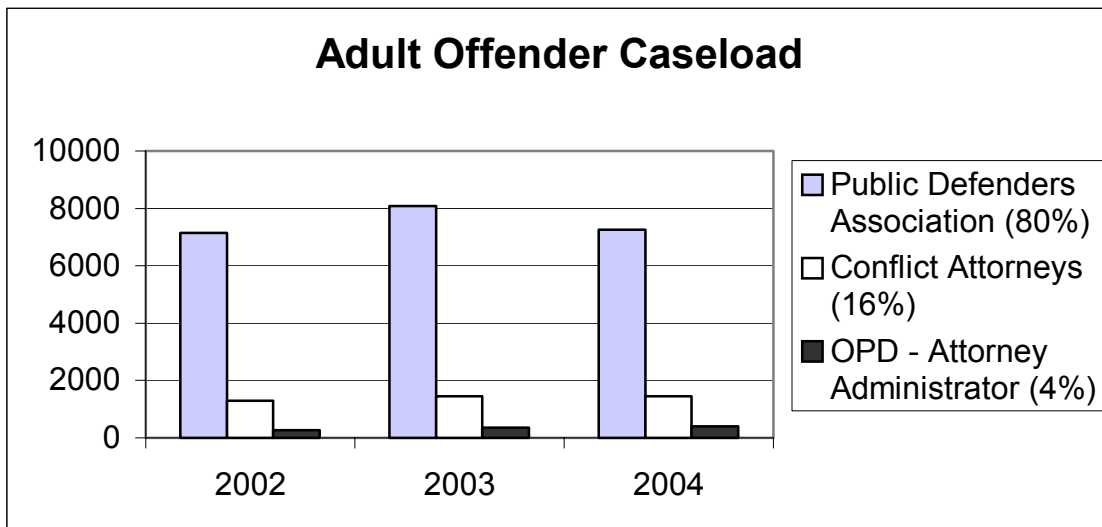
Laying off these attorneys then caused caseloads to increase substantially. These increased caseloads led to system-wide slowdowns and the related expenses within the Law and Justice system. Primarily due to PDA's experience in 2004, OPD and PDA worked together to reconfigure the public defense contract for 2005.

Highlights of 2005 PDA Contract for Public Defense Services:

- based on a per full-time employee rate (as opposed to a per case rate)
- FTE's are determined by the three previous month's caseload history
- includes operating expenses and adequate support staff
- provides for the addition/subtraction of attorneys as caseloads fluctuate

In 2004 there were 9,117 adult indigent defense cases. A breakdown of the public defense services provided to adult offenders for 2002 through 2004 follows:

Figure 6¹⁴



OPD reports that caseloads are difficult to predict from year to year due to the many different influences on the criminal justice system:

¹⁴ Data provided by OPD and Superior Court.

- the number of arrests made by law enforcement agencies
- the number of filings by the Prosecuting Attorney's Office
- the relative state of the economy (when unemployment rates rise fewer people can afford counsel so OPD's workload increases)
- a particular policy emphasis (i.e. methamphetamine crackdown)
- statutory/case law changes

According to the WDA Standards for Public Defense Services, "caseload limits should be determined by the number and type of cases being accepted and on the local prosecutor's charging and plea bargaining practices." The WDA recommends that caseloads for full time public defense attorneys or assigned counsel should not exceed 150 felonies per attorney per year, or 300 misdemeanors per attorney per year.

PDA's current target caseload per attorney/per year is 150 felony cases or 450 misdemeanor cases.¹⁵ As stated in the 2005 PDA contract, "The County recognizes the desirable caseload standards...that constitute a goal for the County in its budgeting...and allocation of resources".

Conflict Counsel

Conflict Counsel consists of a small group of private attorneys who are appointed to cases when PDA cannot ethically represent a client due to a conflict of interest or when caseloads are too high for both PDA and OPD's Attorney Administrator. Conflict Counsel also provide public defense representation at numerous court calendars per week.

OPD contracts with Conflict Counsel on a per case basis. They receive \$220 per misdemeanor and either \$530, \$620, or \$740 for felonies, depending on the level of offense. They also receive a per diem rate if a case goes to trial, are paid a monthly rate to provide calendar coverage for the County, and receive an hourly rate for other services as needed.

OPD Attorney Administrator

The Attorney Administrator currently manages a legal defense caseload for expedited cases, provides representation at the District Court in-custody arraignment calendar and oversees OPD's day-to-day office functions.

The Role of the Courts

District and Superior Court play important roles in the public defense delivery system in Snohomish County by:

- instructing defendants to contact OPD if they cannot afford a lawyer

¹⁵ 2005 Contract for Snohomish County Public Defender Program. Attorney positions are reduced or added if monthly averages fall below or exceed stated limits.

- responding to a defendant's failure to obtain counsel by either issuing court continuances until the defendant obtains counsel or assigning counsel directly from the bench
- ordering recoupment/repayment of some of all of the costs of the public defense provided to indigent defendants at the conclusion of the case

FOCUS ISSUES AND RECOMMENDATIONS

Focus Issue #1: State Funding

Public defense funding should not be subject to local political and budgetary pressures.

The State should increase financial assistance to counties in meeting the constitutional mandates to provide public defense services. The Washington State Association of Counties reports that Washington is one of only eleven states in which the full costs of public defense in the trial courts are borne by the cities and counties.¹⁶

In 2002, Washington Counties were responsible for 94.5% of expenditures for indigent defense, while the state contributed 5.5%. The average state funds defense services at 50%.¹⁷

Snohomish County spends nearly \$7 million per year on public defense services, and this amount is expected to increase as the population of the County continues to rise. All other things being equal, the amount of crime, the criminal workload for justice agencies, and the number of people in jail are likely to change in proportion to the number of people in the county.¹⁸

The 2005 Biennium Session of the Washington State Legislature recently passed House Bill 1542, which if signed by the Governor and appropriately funded, would provide counties with unprecedented levels of state funding for public defense.

Recommendation #1

- The County Council, County Executive and all affected parties should lobby in support of funding House Bill 1542 – Providing Indigent Defense Services. If specific funding for this bill is not provided by June 30, 2005 in the omnibus appropriations act, it will become null and void.

¹⁶ Washington State Association of Counties, Legislative Priorities for 2005

¹⁷ "State and County Expenditures for Indigent Defense Services in Fiscal Year 2002", by the Spangenberg Group (September 2003).

¹⁸ "Snohomish County Regional Justice Center Utilization and Needs Assessment", April 2000, Christopher Murray and Associates.

- If the bill is not funded, then the County should continue to stress the importance of the need for additional state funding for public defense services and urge the introduction of a similar measure in the next state budget cycle.

Parties to take action:

Snohomish County Council

County Executive

OPD Administrator, Courts, PDA

Focus Issue #2: Screening and Verification

The current indigency screening process may not guarantee that only the truly indigent receive representation at public expense.

OPD screeners conduct thorough indigency interviews guided by RCW Chapter 10.101.010. The Washington State Office of Public Defense has stated that “screeners should have access to applicant’s credit reports from credit agencies and various types of financial records in order to effectively verify applications,”¹⁹ but there is no “best practice” on which to base a verification policy.

Minimal verification of information (other than employment status) is pursued by OPD screeners due to a lack of time and resources required to conduct a thorough investigation. Verification is only performed when the screener detects inconsistencies with the data provided. OPD does not conduct credit checks or contract with any agency for income verification purposes at this time.

A verification program in New Jersey screens approximately 10% of their total applications for indigency status and found that 50% of those verified were not eligible for or could contribute to a portion of the cost of their defense. The applications chosen for verification were selected due to unusual or questionable circumstances or information provided, such as ownership of a late model car.²⁰

Verification could be accomplished through an association with a reputable credit bureau, by gaining on-line access to the Washington State Employment Security database, through an agreement with Snohomish County’s Assessor’s Office, or by other methods used to verify financial data. A 2004 Pierce County pre-trial services audit made similar verification recommendations.²¹ The Performance Audit Division did not conduct analysis on the cost/benefits of the various approaches to verification.

¹⁹ “Criteria and Standards for Determining and Verifying Indigency”, Washington State Office of Public Defense, February 2001.

²⁰ See New Jersey Verification Program in “Containing the Costs of Indigent Defense Programs” National Institute of Justice, September 1986.

²¹ Pierce County Pre-Trial Services Performance Audit, Final Report, November 2004.

Focus Issue #2: Screening and Verification (Continued)

The current application for indigency does indicate that all information is subject to verification; however, a separate “release of information” form is often required from agencies before supplying financial information to the requestor. Pierce County reports that this type of authorization is accepted by credit institutions.²²

Recommendation #2

- Provide OPD with the resources and proper staffing to implement a Verification Pilot Program for 10% of the indigency applications.
- Require defendant to sign a “Release of Information” form to allow for verification of application information.
- Prosecuting attorneys and/or the Court should routinely determine if a change in the indigent defendant’s financial status has occurred at the time of sentencing. Judges could use the updated financial information when making decisions about ordering recoupment.

Parties to take action:

OPD Staff

Deputy Prosecuting Attorneys

Snohomish County Executive

Snohomish County Council

Focus Issue #3: Increasing Revenues

Cost recovery in the form of appropriate budgeting, indigency screening fees, promissory notes, court-ordered recoupment, and state reimbursements are essential revenue producing initiatives for OPD.

Screening Fee

\$10 is lower than most screening fees across the country. Pierce and King County charge a \$25 screening fee. The fee, if increased, could help pay for costs associated with verification of financial information.

Promissory Notes

When defendants are determined to be indigent but able to contribute, a Promissory Note is signed. A flat-fee of \$200 for a misdemeanor case or \$835 for a felony case is assessed regardless of how long it takes for the case to be resolved. The current PDA contract pays attorneys based on a per full-time

²² “Criteria and Standards for Determining and Verifying Indigency”, February 2001, Washington State Office of Public Defense.

Focus Issue #3: Increasing Revenues (Continued)

employee rate, which includes overhead and administration costs, as opposed to the flat-fee per case rate that defendants are charged.

Budget Items

OPD is responsible for the expenditures of public defense services, so any revenue generated relating to public defense services should be allocated to OPD. Currently, District Court does not allocate its public defense recoupment revenues to OPD, although Superior Court does. To be in compliance with general management internal control standards, revenues should relate back to where dollars are spent. This action will reduce revenue from District Court by approximately \$100,000 per year.

OPD's revenue line items from the 2002 – 2004 County budgets do not clearly reflect what was actually collected from OPD. This situation may lead to decision makers having unrealistic expectations regarding certain revenue-generating programs for OPD. Standard budgeting practices dictate that revenue line items should accurately reflect revenue generated.

Public Defense Recoupment

Recoupment competes with many other fines, fees, restitution and other costs a judge may impose at disposition. State law requires that “after restitution (victim compensation) is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court” -- RCW 9.94A.760. The County keeps 100% of public defense recoupment, unlike many of the other fines and fees it must share with the state (up to 50%).²³

Recommendation #3

Screening Fee

- Reassess the \$10 screening fee after one year to determine if the amount collected accurately reflects the cost of administering the fee.

Promissory Notes

- OPD should raise the current flat fees it collects on Promissory Notes from defendants to better reflect the actual cost of the service provided.

Budget Items

- Change the Cayenta budget revenue codes so that revenue received from District Court's public defense recoupment is allocated to OPD.

²³ For a listing of typical legal financial obligations and local share percentages from a variety of Washington Counties, see Pierce County Public Defense Cost Recovery Follow-up Study, Updated Report, October 2002.

- The revenue line items for OPD must accurately reflect what is being collected from each revenue stream so that OPD's cost recovery is accurate.
- Recoupment
- Consider prioritizing the fines and fees so that public defense recoupment is a higher priority once all restitution is paid. This will require court action.

Parties to take action:

District Court Administrator
Finance Department Budget Analyst
Superior Court Administrator
OPD Administrator
Deputy Prosecuting Attorneys

Focus Issue #4: Cost Efficiency

Cost efficiency may be gained by evaluating current contracts.

The primary goal for the County is to provide effective assistance of counsel at rates that neither over-fund nor under-fund its defense services. According to OPD, negotiating fair, cost-efficient contracts with competent public defense service providers reduces the likelihood of costly appeals, as well as the risk of costly lawsuits alleging ineffective/inadequate counsel.²⁴

The 2005 PDA contract altered the payment structure for public defense services by adding overhead and administrative costs to a FTE based fee. There may be yet undiscovered problems and/or efficiencies generated by the new contract.

OPD contracts with four municipalities to provide indigent screenings at a rate of \$24 per interview. This rate has been in effect since at least 1997. The cost of providing the service has increased secondary to overhead, salary and benefit cost increases over the past eight years and should be further analyzed.

Recommendation #4

- Analyze the new 2005 PDA contract prior to renewing for 2006 to determine if any modifications are needed for cost containment or other efficiencies.
- Prior to finalizing a new contract for conflict counsel (to reflect a slight increase in felony case rates), OPD should contact King County OPD to

²⁴ In 2004, a multi-million dollar class action lawsuit was filed by indigent defendants against Grant County, Washington for failing to provide an adequate public defense system, as is constitutionally mandated. See www.seattletimes.com/unequaldefense

discuss the issue of rising costs for conflict counsel, since both jurisdictions are experiencing this trend.

- Renegotiate municipal contracts to:
 - ensure the amount charged for indigent screenings and misdemeanor representation reflects actual costs
 - consider billing for OPD’s attorney administrator to provide limited legal assistance to their in-custody defendants.

Parties to take action:

OPD Administrator

PDA Director

Snohomish County Executive

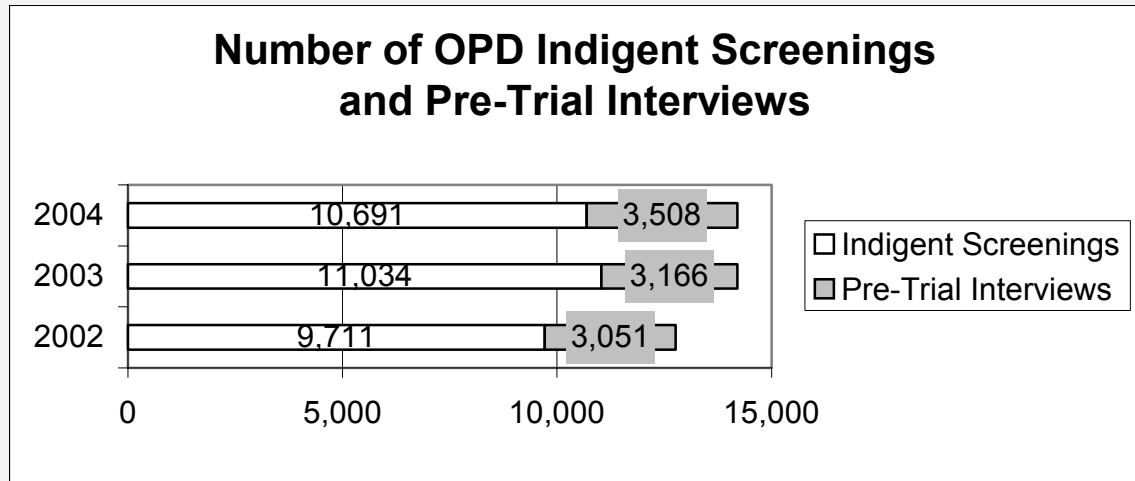
Focus Issue #5: Staffing Levels

OPD’s current level of staffing is insufficient to adequately perform its duties and responsibilities without sacrificing programs and initiatives.

The Office of Public Defense consists of 6.0 full-time employees - an Attorney-Administrator, a Legal Coordinator, a Court Services Interviewer Supervisor and three Court Services Interviewers.

Three full-time interviewers conduct indigency screenings to determine who is eligible to receive the services of a public defender. The remaining staff are cross-trained to screen individuals when needed. Figure 7 depicts the volume of interviews that the OPD screeners have conducted over the last few years.

Figure 7²⁵



²⁵ Data supplied by Snohomish County Office of Public Defense

Focus Issue #5: Staffing Levels (Continued)

In 2004, the three full-time OPD screeners conducted approximately 14,199 interviews or 4,733 each. In comparison, King County screened 38,982 individuals in 1999²⁶ with an average of eleven full time interviewers, or approximately 3,544 each. With existing staff, Snohomish County performs more indigency screenings per interviewer than King County.

Lower Staffing Levels

OPD lost a .5 FTE in the 2005 budget cycle, while workload continued to increase. The services that OPD does not provide due to staffing reductions include:

1. OPD screeners no longer travel to all outlying District Court locations to conduct indigency screenings due to a lack of office coverage at critical times.
2. OPD is not verifying information provided on indigency applications as noted in Focus Issue #2.
3. OPD collects and processes cash payments from defendants on a daily basis. Occasionally only one OPD staff person is in the office which could lead to a situation in which there could be insufficient monitoring of cash drawers.
4. The OPD attorney administrator provides basic office coverage, often taking time away from completing administrative tasks.

Higher Staffing Levels

The benefits of higher staffing levels in OPD could include:

1. Each arraignment calendar at all District Court locations could then be staffed by both an indigency screener and by a PDA attorney. This practice assigns defendants to a public defense attorney early in the criminal justice process. According to a District Court administrator, having a prosecutor, a defense attorney and a screener at each arraignment calendar could result in:
 - more cases settled faster
 - fewer continuances and/or delays
 - fewer direct assignments from the bench
2. Random verification of indigency applications could be completed, which may reduce the number of defendants qualifying for representation at public expense. The resulting cost savings of a verification program could help pay for the additional .5 FTE.
3. OPD could seek grant funding.
4. Potential cost savings due to shifting court calendar coverage currently being contracted to conflict counsel to an in-house OPD attorney.

Recommendation #5

- Increase OPD staff by .5 FTE's to return to 2004 levels of 6.5 FTE's to mitigate issues noted in "*Lower Staffing Levels*" above.

²⁶ King County Public Defense Study, July, 2000, The Spangenberg Group.

- Consider hiring an additional OPD attorney to handle the various court calendars that are currently contracted with conflict counsel.

Parties to take action:

Snohomish County Executive
Snohomish County Council
OPD Staff

Focus Issue #6: General Office Management

More efficient and effective management may result by keeping OPD policy and procedure manuals, contracts and forms current.

Clear policies and procedures are necessary to guide general business practices.

Some of the forms OPD utilizes to convey important information to the defendant are confusing and outdated. The clearer the information, the greater chance that defendants will understand, respond, and be active participants in the process.

Recommendation #6

- Revise the “Indigency Screening and Cost Recovery Manual.”
- Publish OPD’s current policies, procedures and new initiatives in comprehensive manuals for its staff.
- Update and standardize the following forms:
 - *Superior Court Summons* – The information on the bottom of the summons pertaining to OPD is difficult to read and incomplete. We suggest that the District Court “How to Apply for a Court Appointed Attorney” form be used as a template. Request defendants to contact OPD within 10 working days of receiving the summons.
 - *Promissory Note* – Additional language should be added informing defendants that:
 - 1) If the Note is not paid in a timely fashion, a collections agency will be contacted and may pursue the defendant for payment.
 - 2) Payment of the Note in full is expected prior to the resolution of the case.
 - *Determination of Indigency* – Consider using two pages for the application. A lot of information is requested and it appears confusing. Though we did not research the issue of form design, we would suggest that defendants might fill out the form more completely if it were more approachable.

Parties to take action:
OPD Administrator and Staff
Prosecutor's Office
Court Administrators

Focus Issue #7: Elevate OPD's Profile

A stronger policy voice for public defense services will improve the overall criminal justice system in Snohomish County.

Each component of the criminal justice system is interdependent. What affects one area (i.e. prosecution) inevitably will affect another (i.e. defense).

OPD should be at the decision making table on all matters relating to the criminal justice system in Snohomish County. Without a "seat at the table", OPD is often overlooked as a partner in the law and justice community, sometimes at potential financial detriment to the County. For example:

1. OPD is often confused with PDA (the contractor for defense services). During the 2005 budget process, a discussion concerning the budget for legal defense took place with PDA (the contractor) when the meeting should have been held with OPD.
2. When a proposal for hiring a fifth court commissioner was discussed, initial conversations neglected to take into account the estimated \$100,000 in public defense costs that would be associated with the increased capacity of civil contempt case filings.

Justice works best when all components of the criminal justice system have adequate resources to perform their roles. Too much focus on any one component of the criminal justice system and there is potential to produce an inefficient system. Snohomish County needs to be cognizant of this balance.

According to the Standards for Public Defense Services adopted by the Washington State Bar Association, "public defense attorneys...should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys...in prosecutorial offices in the area." OPD states that PDA has consistently delivered effective assistance of counsel at far less cost than a similarly situated Snohomish County prosecutor.²⁷

Recommendation #7

- Make OPD a voting member of the Law and Justice Cabinet.

²⁷ For a salary analysis see OPD's 2005 Budget – Department Request Priority Package Detail.

- Public defense attorneys should be given salary parity with Snohomish County Prosecutor's Office. A gradual step program could be implemented, similar to King County's program, so that the financial impact to the budget is minimized.
- Establish a public defense/local bar association advisory committee. Its purpose would be to stress the importance of effective, efficient public defense in Snohomish County to elected officials, government agencies and the community-at-large. The advocacy committee could review contracts, become involved in lobbying efforts, research reform efforts, evaluate compliance with standards as well as individual attorney performances and promote better public relations for OPD and the public defense system.

Parties to take action:

Law and Justice Cabinet
Snohomish County Executive
Snohomish County Council
OPD Administrator
PDA Director

Areas for Additional Study

The following issues went beyond the limited scope of this study but could have a significant impact on Snohomish County's public defense system. We recommend that additional analysis be conducted on these subject areas, and that OPD be a key player in any decision-making process.

Technology

The Office of Public Defense will "go live" with a new case management system designed by the County's Department of Information Services within the next few months. The Snohomish County PDA may want to investigate using a case management system that is compatible to OPD's new system.

- 1) The Department of Information Services should meet with PDA to discuss issues of computer system compatibility regarding case management.

Alternatives to Prosecution

King County, in particular, expects to see reductions in the number of cases requiring public defense in 2005 due to some of these initiatives that have been implemented in their jurisdiction.²⁸

- 1) Increase the number of diversion programs.
- 2) Research other alternatives to prosecution without endangering public safety.
- 3) Focus more on treatment to prevent recidivism.

²⁸ See Law and Justice Program Plan, OPD Program Highlights, www.metrokc.gov/budget/2005.

- 4) Reduce some felony offenses to misdemeanors or diversion. Other jurisdictions have done this with property offenses.²⁹
- 5) Decriminalize selected minor offenses, where offenders can pay a fine in lieu of a court appearance. Has the county/state done everything it can to see that certain misdemeanors are classified as infractions instead?

Court Related Issues

- 1) Analyze the causes of court continuances and act accordingly. Judges, lawyers, administrators and staff all voiced concern over the number of court continuances and the cost they impose on the justice system.
- 2) Explore developing uniform public defense eligibility guidelines for both adult offenders and juvenile/dependency cases. Applying uniform eligibility guidelines in a consistent fashion to all potentially indigent defendants could lead to efficiencies.³⁰
- 3) Research standardization of the indigent screening process in order to ensure efficiency and uniformity in making indigency determinations.
- 4) Further examine the impact of direct assignments from the bench. Assigning public defense counsel directly from the bench grants a defendant representation at public expense regardless of the defendant's financial ability to pay. By reducing direct assignments, OPD may generate additional Promissory Note revenue, and potentially assign fewer cases to indigent defense counsel.
- 5) Pursue open cooperation and communication between OPD and its counterpart within Superior Court so that all parties can benefit from shared expertise, ideas and processes.
- 6) Investigate development of a clear recoupment policy for both Superior and District Court to be written incorporating OPD's knowledge of public defense costs and financial screening.
- 7) Conduct further research into consolidating Snohomish County defense services into a centrally administered program. This could promote quality, cost-efficiency, uniformity, cohesive planning and increased accountability in the provision of defense services.
- 8) With agreement of the Superior Court, a review of Superior Court/Juvenile Division indigent defense standards should be

²⁹ In addition to a DWLS diversion program, the Yakima County Department of Assigned Counsel has assisted in developing and is participating in a felony level diversion program for theft offenses.

³⁰ The Ten Principles of a Public Defense System, American Bar Association, February 2002.

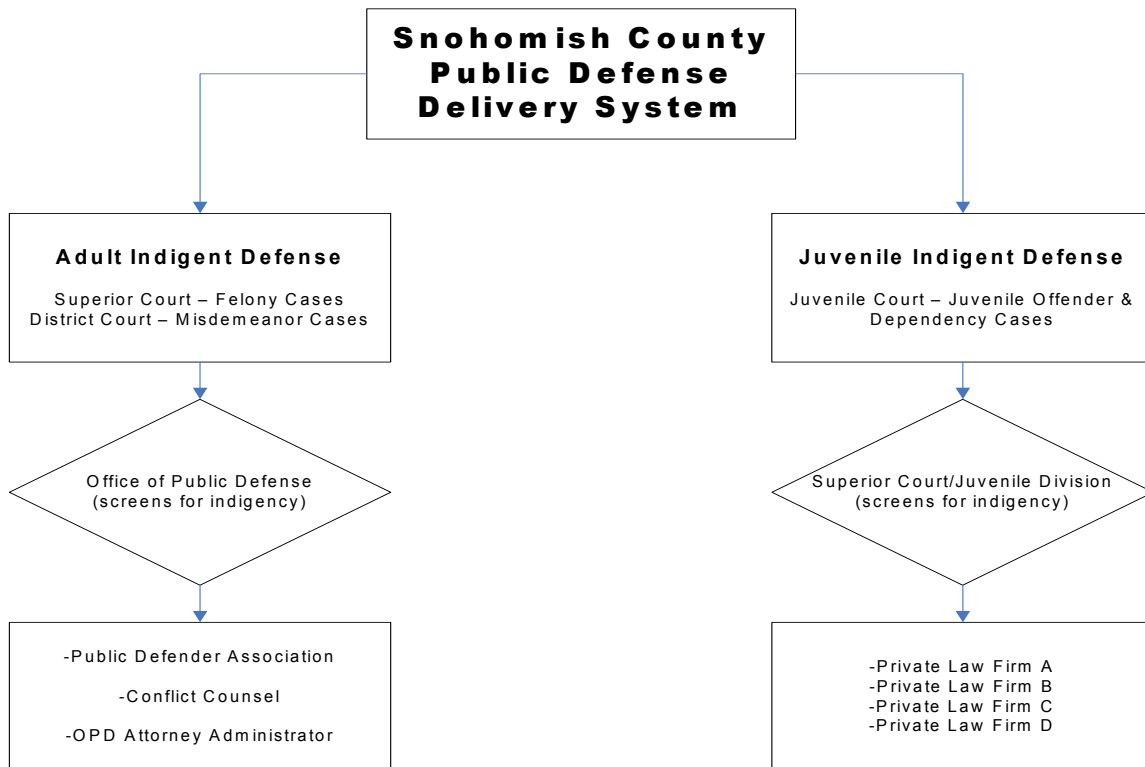
undertaken to assess their compatibility with the Washington State Bar Association guidelines for public defense services.

APPENDICES

APPENDIX A

Snohomish County's Public Defense Delivery System

Snohomish County has responded to the constitutional mandate to provide a public defense system via a combination of methods. Adult offender services (and minors charged in District Court) are overseen by OPD who contracts with the non-profit Snohomish County Public Defender Association (PDA). OPD also contracts with a small number of private attorneys willing to take appointed public defense cases when a conflict of interest arises within PDA or if the caseloads for PDA or OPD are too large. Superior Court/Juvenile Division contracts with three to four private law firms to provide juvenile offender and dependency³¹ public defense services. The following organizational chart depicts Snohomish County's current public defense system.



³¹ Dependency cases are those where the state seeks to remove children from the care of the parents.

APPENDIX B

Federal, State and Local Provisions Pertaining to Public Defense

United States Constitution, Bill of Rights, Amendment VI

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...and to have the assistance of counsel for his defense.”

Washington State Constitution, Article 1, Section 22

“Rights of the Accused – In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel...”

Washington State RCW, Chapter 10.101 - Indigent Defense Services

RCW Sections

- 10.101.005 Legislative Finding
- 10.101.010 Definitions
- 10.101.020 Determination of Indigency -- Provisional Appointment --
Promissory Note
- 10.101.030 Standards for Public Defense Services
- 10.101.040 Selection of Defense Attorneys

Snohomish County Code, Chapter 2.09, Office of Public Defense

SCC Sections

- 2.09.010 Creation and Purpose
- 2.09.020 Definitions
- 2.09.030 Authority and Functions
- 2.09.040 Indigent Criminal Defense
- 2.09.050 Determination of Indigency
- 2.09.051 Screening Fee Imposed
- 2.09.060 Pre-Trial Release
- 2.09.070 Attorney Administrator
- 2.09.080 Standards for Public Defense

APPENDIX C

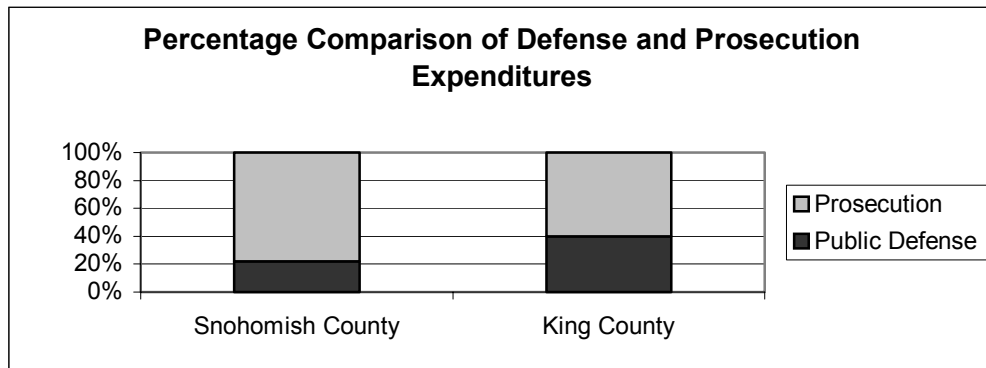
The following chart compares the percentage of expenditures for OPD and the Prosecutor’s Office with the total Law and Justice budget for 2005 for both Snohomish County and King County.

King County has a similar public defense structure to Snohomish County, and has been touted as being among the best of the major urban counties across the country in providing public defense services.³²

2005 Law and Justice Expenditures³³

	<u>Snohomish County</u>	<u>King County</u>
Office of Public Defense	3.5%	7.6%
Prosecutor’s Office	12.5%	11.3%

Of the total amount spent on just defense and prosecution services for King and Snohomish Counties, Figure 3 compares how those expenditures are divided among public defense and prosecution for 2005.



³² King County Public Defense Study, Final Report, July 2000, The Spangenberg Group.

³³ 2005 King County Proposed Budget, www.metrokc.gov/budget/2005/proposed/index05prop.htm, 2005 Snohomish County Adopted Budget, pg. 18.

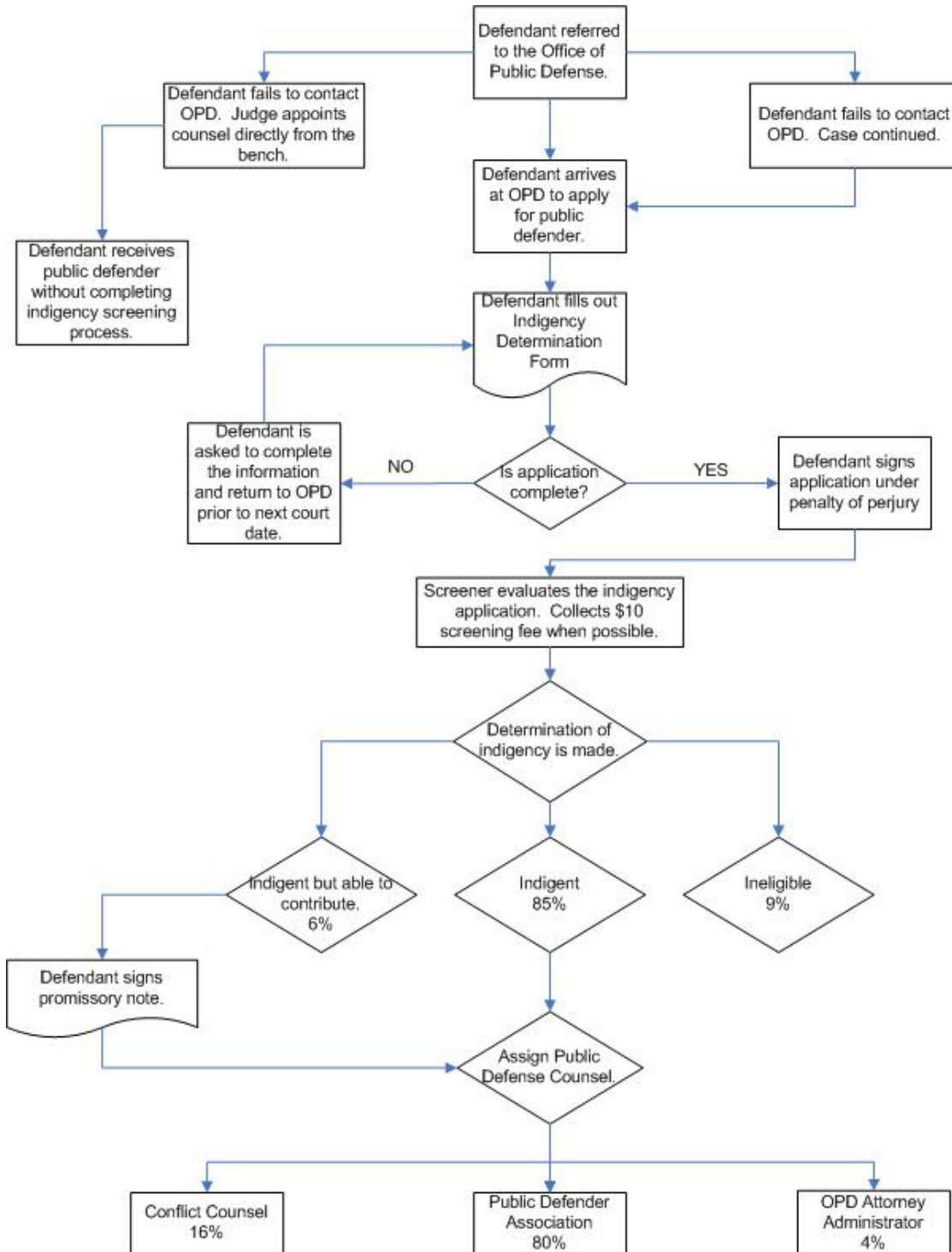
APPENDIX D

How Do Defendants Find Out About OPD?

- **Summons** – Prosecutor’s Office mails a defendant a summons instructing them to contact OPD prior to court date.
- **Summons Plus** – OPD interns telephone defendants to remind them of court dates and how to obtain counsel.
- **Bench Referral** - Judges verbally refer defendants to OPD usually at arraignment.
- **Court Clerk Referral** - Clerks deliver written referrals to defendants in District Court giving them 10 days to contact OPD.
- **OPD Screeners** – Staff conduct interviews at South Division of District Court, the OPD office and the County jail in Everett.
- **Public Defenders** – Defense attorneys refer individuals directly to OPD.
- **Corrections Staff** - Verbally refer in-custody defendants to OPD.
- **County Website** – Provides general information on OPD services.
- **Telephone Information Line** – Voice message provides basic OPD information.

APPENDIX E

INDIGENT SCREENING PROCESS



APPENDIX F

RCW Chapter 10.101.010

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

- Receiving public assistance; or
- Involuntarily committed to a public mental health facility; or
- Receiving an annual income, after taxes, of one hundred and twenty –five percent or less of the current federally established poverty level; or
- Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

**Types of Information Requested
on the
Determination of Indigency Form**

<u>Income/Assets</u>	<u>Expenses/Liabilities</u>
Monthly Income (take-home)	Rent/Mortgage/Utilities
Cash, Savings, Checking	Number of Dependents
Public Assistance Awards	Loans/Medical Bills/Child Support
House/Property/Vehicles	Previous Court Obligations

The "Determination of Indigency" financial information form was designed by the state of Washington, and modified to better accommodate Snohomish County.

RESPONSES TO THE REPORT

To: Kymber Waltmunson
Connie Barndt

From: Beth Fraser Cullen, Attorney Administrator, OPD

Date: April 29, 2005

Re: Comments to OPD Performance Audit, March 31, 2005 draft

Thank you for the opportunity to comment on the draft report. On the whole, I feel the report accurately presents the significant workload that OPD manages as well as the fact that OPD provides a high level of service despite the staffing challenges it faces. My comments will address the various “Focus Issues” outlined in the report.

Focus Issue #1—State Funding

OPD strongly concurs with the finding that additional state funding would greatly assist the County in providing the constitutionally mandated services for which we are responsible. OPD’s contribution to this effort is contingent on having the time and staffing to dedicate to it.

Focus Issue #2—Screening and Verification

We concur with your assessment that “OPD screeners conduct thorough indigency interviews”, but we also agree that additional verification efforts could assist in ensuring that only the truly indigent receive representation at public expense. As with the mentioned New Jersey program, OPD screeners flag unusual or questionable interviews for further research, but other tools could be added to our repertoire. Again, as previously noted, the ability to perform this heightened verification will be contingent upon additional staffing.

The third recommendation in this Focus Issue is to have prosecuting attorneys and/or the Court routinely determine whether a change in the defendant’s financial status has occurred since appointment of counsel. We concur that a fresh financial inquiry may help the court determine whether attorney fees are appropriate at sentencing, however, we feel the inquiry is most appropriately made by the Court, as the prosecuting attorney is in an adversarial position to the defendant, making such inquiry inappropriate.

We also agree that it would be a productive area for additional study to analyze the impact of direct appointment of counsel from the bench.

Focus Issue #3—Increasing Revenues

OPD has been, and will continue to evaluate the appropriate rates for the screening fee and promissory notes. OPD is very interested in making sure that the appropriate amount for either rate is a fair one, and is only assessed to those accused persons who have the

ability to pay. OPD is very sensitive to the critical right that no one who is financially eligible is denied access to counsel at public expense.

Focus Issue #4—Cost Efficiency

OPD will continue to analyze existing contracts to determine where efficiencies can be found.

Focus Issue #5—Staffing Levels

OPD concurs that there is a need for additional staffing. The original pre-OPD responsibilities of the office were to provide pretrial release assessments to the court and to assign counsel to financially eligible persons facing the potential loss of liberty. Since the creation of OPD, the office has undertaken the additional responsibilities of in-house representation of clients, contract negotiation and administration, office administration as well as the office support for the new duties. Further, the statistics show that the interview workload had been increasing steadily for several years, while staffing has decreased. Aside from the increase in interviews, OPD staff has taken on a significant support role in administering calendar coverage responsibilities. Current staffing levels have resulted in times where the office has had to operate with restricted hours to accommodate situations where an employee has become ill while another is on vacation. There is also concern that current staffing levels result in times where only one employee is present in the office. This is of concern since we deal with cash collections and a highly volatile population. When we had the additional .5 FTE in 2004, we were already stretched thin. This report recommends that additional responsibilities be taken on, including a heightened verification program for indigency screening and grant research and writing.

The report seems to confuse two OPD programs at the outlying District Court arraignments (out of custody), both of which have been curtailed in 2005 due to budget constraints. The first is the arraignment program. In late 2003 and in 2004, OPD contracted with PDA to provide a defense attorney at all District Court arraignments, both in and out of custody, to guarantee access to counsel and ensure constitutionally valid pleas at arraignment. Deputy Prosecuting Attorneys were also present at these calendars to negotiate resolutions. Due to 2005 budget constraints OPD did not have the funds to continue this contract with PDA resulting in no defense counsel being present at out of custody arraignments calendars (and thus limiting the amount of pleas at arraignment, leading to more court appearances). The OPD Attorney Administrator took over the role of defense counsel at the Monday-Friday in custody arraignment calendar. The second program mentioned is the outlying District Court screening program. In 2004, OPD sent screeners to the three outlying District Court Divisions to perform indigency screenings and appointment of counsel at arraignment. PDA support staff was also present to immediately assign an attorney and interview date to the defendant. This caught applicants at the earliest possible time, saving costly continuances. In 2005, with decreased staffing, OPD only travels to one of the three outlying courts to perform this service.

Focus Issue #6—General Office Management

OPD will continue to review and update its office policy and procedure manuals, with an eye to clarity and completeness.

Focus Issue#7—Elevate OPD's Profile

We concur with this assessment. Elevating OPD's profile would contribute to efficiencies within the law and justice arena by ensuring that all counterpoints are heard on issues that affect the law and justice system. The report cites good examples on this point.

We also concur with the assessment that public defense counsel should be viewed as equal in value to their counterparts on the prosecution side. How to achieve this equality should be the subject of on-going review. We believe that the implementation of the 2005 PDA contract is a strong step in the right direction. In terms of caseload limits, the numbers are coming much closer to those recommended by the WDA Standards. It should be noted that PDA is working this year with caseload limits they proposed based upon their 32 years of experience at handling public defender caseloads in this county as well as the efficiency of scale that they have achieved through managing caseloads in four District Court locations as well as one Superior Court location, all with one main office and one strong support staff team.

We agree with the recommendation of creating a public defense/local bar association advisory committee. Any opportunity to help the community better understand the critical role of public defense in a free society is welcomed. I am concerned however that some of the duties recommended for this committee are already appropriately the responsibility of OPD, so additional thought should go into the role such a committee would play.

April 29, 2005

I have reviewed the draft performance audit study relating to Public Defense. I am in agreement with your focus issues and believe that you have accurately portrayed the challenges that OPD staff have articulated in the past to both the Executive and Councilmembers. You have provided recommendations to make a good program even better, and we will strive to implement those changes to the extent resources and competing priorities allow.

I would like to offer the following comments to your study:

Need for additional staff. The study recommends adding staffing resources (a) for a Verification Pilot Program, (b) to replace the 0.50 FTE eliminated in the 2005 budget and (c) to handle the various court calendars that are currently contracted with conflict counsel.

I will request that Ms. Cullen include decision packages addressing these areas in her 2006 Budget Request to the Executive, citing this study and including analysis of the benefits to the County. However, I need to note the following:

- While a 0.50 FTE was eliminated, funding for contract council to cover both the in- and out-of-custody arraignments was also eliminated.
- The Attorney-Administrator now covers the in-custody arraignments which has further exacerbated her availability to manage the office.
- Currently, an indigency screener and an indigent defense attorney are not present at the out-of-custody arraignments. It would require a 0.40 FTE screener just to cover the out-of-custody calendars four days per week, leaving only 0.10 FTE (i.e., 4 hours per week) to verify indigency status and provide office coverage.
- To add an attorney for the out-of-custody calendar would also require at least a 0.40 FTE.
- While we too believe that there would be cost savings with in-house counsel rather than contract, an analysis should be done regarding the feasibility of one additional position providing sufficient coverage given the often overlapping timeframes of the calendars in question (e.g., arraignment, mental health, contempt, etc.).
- Adding an additional attorney position would further strain the staff support resources within OPD.

Need for further review/analysis. The study recommends review/analysis in several areas. It is already the Executive's intention, and your report further supports the need, to review the screening fee, PDA contract and fees collected from Promissory Notes prior to finalizing the Executive's 2006 Recommended Budget. Regarding Public Defense Recoupment, the 2005 Recommended Budget was based upon the Prosecuting Attorney's willingness (and commitment) to request that the District Court impose fees in a manner that maximizes the County's revenue. And finally, conflict counsel and municipal services contracts are on the OPD work plan – unfortunately other issues (e.g., PDA contract, arraignment coverage, office coverage, etc.) have been a higher priority.

Parity with Prosecutors. The study recommends that public defense attorneys be given salary parity with the Prosecutor's Office. I certainly agree. However, whether one is looking at prosecutorial or defense staff salaries, skills and salary level should match caseload requirements. A salary schedule should not become a career path, resulting in the County paying for more experienced attorneys than are necessary simply because someone has been here a certain length of time.

Areas for Additional Study. I believe that many, if not all, of the issues addressed in this section should be added to the Law and Justice Cabinet's work plan since so many of the Law and

Justice System players are affected. The one exception may be the area of DIS meeting with PDA to discuss the new OPD case management system. I agree with this recommendation and would only suggest that OPD be included in any such discussion since that office technically “owns” the new program.

Thank you for your work on this subject. The provision of indigent defense is such an important part of criminal justice service delivery and is truly the measure of a healthy, well-functioning law and justice system. I appreciate your willingness to work with and listen to OPD and Executive staff as you reviewed data and considered your ultimate focus issues and recommendations.

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