

## **WASHINGTON STATE OFFICE OF PUBLIC DEFENSE**

### **COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING**

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

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

- a) Additional investigator services
- b) Additional expert services
- c) Establishing a public defense agency within the local government structure
- d) Professional evaluation of attorney performance by a public defense expert
- e) An attorney coordinator to provide oversight for local public defense services such as, but not limited to, contract management, review of attorney case/time reports, handling client complaints, approving invoices for non-attorney services and coordinating with other local government offices
- f) Increase in public defense attorney compensation
- g) Provision of public defense services at first appearance calendars (or increase of first appearance services if public defenders are already provided)
- h) Addition of more attorneys to lower public defense caseloads
- i) Addition of social worker services to assist public defense attorneys
- j) Direct training costs to train public defense attorneys
- k) Evaluations of defendants for sentencing options, such as drug evaluations, SSOSA, DOSA
- l) Provision of interpreter services for attorney-client interviews and communication (but in-court interpreter appointments required under Chapter 2.43 RCW are not an approved use of funds)
- m) Equipment or services to ensure safe, continuity of representation due to COVID-19 or other officially declared emergencies or disasters. Examples include personal protective equipment for defense attorneys and clients (masks, gloves, face shields, etc.) and technology for attorneys to communicate remotely with clients and participate in remote or in-person court proceedings (subscriptions for video conferencing services, devices to facilitate confidential attorney-client conversations in court, etc.).
- n) Subject to approval by OPD, applicants may request funds for other uses that improve public defense services and are supported by the WSBA Standards for Indigent Defense Services.

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

- a) Supplanting county or city funds used for public defense services prior to the initial disbursement of state funds to the county or city
- b) Billing or other administrative costs incurred by the county or city in administering the public defense program
- c) Indigency screening
- d) County, city or court technology systems or administrative equipment not exclusively used for public defense services
- e) County or city attorney time, including advice on public defense contracting, except as provided in Section 1(d) above.

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

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

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

**PROCEDURE**

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

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

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

**COMMENTARY**

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

## **OPD PUBLIC DEFENSE IMPROVEMENT PROGRAM – CONTRACT ATTORNEY TIME REPORTING REQUIREMENT**

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

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

Attorney reports are required to provide the following information annually:

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

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

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

### **COMMENTARY**

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

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

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

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