



**Snohomish County
Office of Performance Audit Services**

AUDIT FOLLOW UP: PUBLIC DEFENSE

11-17-2006

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1 BACKGROUND

This performance audit was requested as a result of concerns about the rising costs of providing public defense services in Snohomish County. The final report was published on May 6, 2005.

Public defense in Snohomish County has two components: the Office of Public Defense (OPD) and Superior Court. We did not analyze Superior Court for this study. 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.

Color Coding

The Office of Performance Audit Services uses the following color system to show progress on audit recommendations:

| | |
|--|--|
| | The audit recommendation has been addressed or the issue has been resolved by alternate means. |
| | Resolution of this audit recommendation has been initiated or clear plans are in place to resolve the issue. |
| | No progress has been made toward addressing the recommendation. |

2 OBJECTIVES, SCOPE, AND METHODOLOGY

The purpose of this audit follow up is to determine if the 22 recommendations made by the Performance Auditor in the Public Defense Audit were followed.

We obtained this information through:

- Office of Public Defense written report on audit recommendation status
- Interviews with OPD Attorney Administrator and Interviewer Supervisor
- Interview with Prosecuting Attorney

3 FOLLOW UP

The Office of Public Defense has addressed or partially addressed all audit recommendations. Three recommendations have been withdrawn. Of the two recommendations that are “partially addressed,” full completion is anticipated by the end of 2006. The original text of the recommendations can be found in Appendix A.

| Rec Number | Was the recommendation addressed? |
|------------|-----------------------------------|
| 1 | Yes |
| 2 | Yes |
| 3 | Yes |
| 4 | Beyond OPD Authority |
| 5 | Yes |
| 6 | Yes |
| 7 | Withdrawn |
| 8 | Yes |
| 9 | Beyond OPD Authority |
| 10 | Yes |
| 11 | Yes |

| Rec Number | Was the recommendation addressed? |
|------------|-----------------------------------|
| 12 | Partial |
| 13 | Yes |
| 14 | Yes |
| 15 | Yes |
| 16 | Yes |
| 17 | Yes |
| 18 | Yes |
| 19 | Yes |
| 20 | Yes |
| 21 | Yes |
| 22 | Partial |

3.1 State Funding

3.1.1 HB1542 Providing Indigent Defense Services—Recommendation 1

This recommendation was addressed but not resolved. HB 1542 was passed but not funded in 2005. OPD reports that it is a Snohomish County legislative priority to work with the state to find adequate funding for all aspects of the criminal justice system including public defense.

3.2 Screening and Verification

3.2.1 Verification Pilot Program—Recommendation 2

OPD was funded for and has hired a full time interviewer to facilitate implementation of an Indigency Screening Verification Pilot Program. OPD reports that they have implemented the program.

3.2.2 Release of Information Forms—Recommendation 3

OPD reports that defendants are now signing “Release of Information” forms and that this facilitates verification of indigency by their interviewers.

3.2.3 Prosecuting Attorney/Court Action—Recommendation 4

The auditors continue to recommend that the Prosecuting Attorneys play an active role in inquiry into changes in indigent defendants’ financial status; however, this recommendation is beyond OPD’s control so is not included in this follow up reporting for OPD. Prosecuting Attorneys have not regularly implemented this practice.

3.3 Increasing Revenues

3.3.1 Screening Fee—[Recommendation 5](#)

OPD reviewed the screening fee amount and believes that the \$10 fee accurately reflects the cost of the process.

3.3.2 Promissory Notes—[Recommendation 6](#)

OPD has reviewed fees collected on Promissory Notes and made adjustments. The actual cost of providing services is reflected in the new charges.

3.3.3 Budget Items—[Recommendation 7](#)

The auditor withdraws this recommendation regarding reallocating revenue from District Court to OPD. These revenues are part of the General Fund and would not increase resources for OPD. OPD receives collection statistics from District Court for budget information.

3.3.4 Revenue Items—[Recommendation 8](#)

OPD reports that revenue line items for OPD now accurately reflect what is being collected in each revenue stream.

3.3.5 Recoupment—[Recommendation 9](#)

Prioritization of fines and fees so that public defense recoupment is a higher priority has been an ongoing project with the District Court and the Prosecutor's Office. Judges and courtroom attorneys are asking the court at sentencing to prioritize fines/fees that remain in the County. Defense reimbursement is among those fees. Implementation of this recommendation is beyond the authority of OPD.

3.4 Cost Efficiency

3.4.1 2006 Public Defenders Association Contract—[Recommendation 10](#)

OPD reports that they analyzed the 2005 PDA contract and made changes for 2006. The result was to create a new PDA attorney position that was able to provide representation on Probable Cause calendar coverage and out-of-custody expediteds at a lower rate than conflict counsel. This switch also resulted in PDA taking over procedural work that OPD had been doing on these cases. This allowed OPD's staff to better redirect their time/energy. Work that had previously been billed as hourly was converted to case credits at a projected cost savings to the County.

3.4.2 Conflict Counsel—[Recommendation 11](#)

OPD has collaborated with other jurisdictions around effectively contracting with conflict counsel. OPD reports that they check with regional Public Defenders throughout the year to discuss issues of mutual interest.

3.4.3 Municipal Contracts—[Recommendation 12](#)

OPD and the Executive are jointly addressing renegotiation of municipal contracts and anticipate resolution by the end of 2006. The new service rates reflecting actual cost of service were completed in July.

3.5 Staffing Levels

3.5.1 OPD Staffing—[Recommendation 13](#)

The County Council approved a 1.0 FTE interviewer in the 2006 budget. This position has been filled.

3.5.2 Add OPD attorney—[Recommendation 14](#)

The recommendation for hiring an additional OPD attorney to handle calendars currently staffed by conflict counsel was addressed but not resolved. OPD made a request for an additional OPD attorney in the 2006 Budget. It was not approved for 2006.

3.6 General Office Management

3.6.1 Screening Manual Updates—[Recommendation 15](#)

OPD's Indigency Screening and Cost Recovery Manual has been updated.

3.6.2 Policy and Procedure Manual—[Recommendation 16](#)

OPD's policy and procedure manual has been completed.

3.6.3 Summons Form—[Recommendation 17](#)

OPD has been working with the Prosecuting Attorney and Superior Court to update this form. OPD does not have ultimate authority to implement this recommendation.

3.6.4 Promissory Note Payment—[Recommendation 18](#)

The Promissory Note paperwork currently informs clients that untimely payment will result in the debt being turned over to a collections agency. OPD develops payment plans for each defendant that may or may not require payment by the time a case is resolved. The auditors withdraw the portion of this recommendation that asks that payment in full is expected prior to the resolution of the case.

3.6.5 Determination of Indigency Form Update—[Recommendation 19](#)

OPD has completed its revision of the Determination of Indigency form.

3.7 Elevate OPD's Profile

3.7.1 Voting Membership—[Recommendation 20](#)

OPD is not a voting member of the L&J Cabinet at this time, however, this issue has been raised and no objections were voiced. The item is on the Law & Justice Cabinet agenda for the December 2006 meeting.

3.7.2 Salary Parity—[Recommendation 21](#)

In the new PDA contract COLA and retirement contributions were proposed by OPD. This proposal will be reviewed during the budget process and will be determined by the end of 2006. This proposal does not reflect parity, but would be movement in that direction. Attainment of parity is not within OPD's control, but they continue to strive toward that goal. The auditors agree with OPD that the recommendation should state that OPD will continue to seek parity.

3.7.3 Advisory Committee—[Recommendation 22](#)

OPD plans to establish an advisory committee by the end of 2006. The role of this committee would include community outreach and education, researching reform efforts, and staying involved with issues that affect the defense community. These are different goals than recommended in the original audit report; however, we agree with OPD that they are appropriate and support this alternate approach.

4 APPENDICES

4.1 Appendix A—Full Text of Recommendations

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. 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.

Recommendation 2

Provide OPD with the resources and proper staffing to implement a Verification Pilot Program for 10% of the indigency applications.

Recommendation 3

Require defendant to sign a “Release of Information” form to allow for verification of application information.

Recommendation 4

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.

Recommendation 5

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

Recommendation 6

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.

Recommendation 7

Budget Items: Change the Cayenta budget revenue codes so that revenue received from District Court’s public defense recoupment is allocated to OPD.

Recommendation 8

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.

Recommendation 9

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.

Recommendation 10

Analyze the new 2005 PDA contract prior to renewing for 2006 to determine if any modifications are needed for cost containment or other efficiencies.

Recommendation 11

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

Recommendation 12

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.

Recommendation 13

Increase OPD staff by .5 FTE's to return to 2004 levels of 6.5 FTEs.

Recommendation 14

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

Recommendation 15

Revise the "Indigency Screening and Cost Recovery Manual."

Recommendation 16

Publish OPD's current policies, procedures and new initiatives in comprehensive manuals for its staff.

Recommendation 17

The Superior Court 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.

Recommendation 18

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.

Recommendation 19

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.

Recommendation 20

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

Recommendation 21

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.

Recommendation 22

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.