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BENTON COUNTY OFFICE OF PUBLIC DEFENSE

SUPERVISION AND QUALITY CONTROL PLAN

Quality Representation – Fiscal Accountability

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INTRODUCTION & PURPOSE

Introduction & Purpose

At the core of the Mission of Benton County Office of Public Defense (“OPD”) is the fulfilling of the legal right to public defense counsel by providing well-trained, diligent, competent, public defenders when required by law. The nature of OPD’s staffing is such that the majority of the public defense services it provides are done so through contracts with private attorneys¹. While there are many advantages of providing public defense services through private attorney contracts (including flexibility, ability to attract talent, and cost effectiveness) it can be difficult sometimes to monitor the effectiveness and quality of the public defense services being provided.

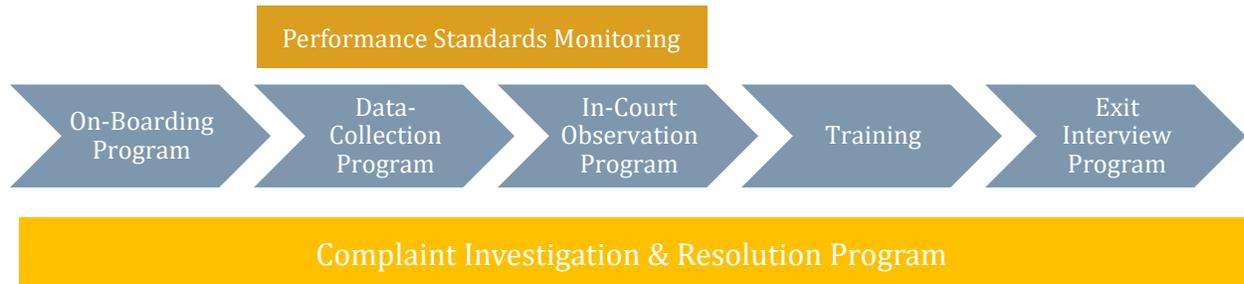
To promote high levels of competence and quality with public defense services, OPD has implemented a number of programs aimed at providing management with relevant and useful data and information by which to make strategic decisions, engage in short and long term planning, and make contract related decisions.

¹ The current staffing model has three fully employed staff defenders and over 40 contract defenders providing the OPD’s legally mandated public defense services.

OVERVIEW

Overview

Quality control for public defense contract holders in Benton County will be accomplished by a number of interlinked programs.



Together these programs, which are explained in further detail in the remainder of this whitepaper, form the overall quality control strategy by which Benton County Office of Public Defense will advance its mission of providing *quality representation with fiscal accountability*.

On-Boarding

WHAT IS ON-BOARDING

Unlike starting as a new employee, new contract defenders, while qualified to take on public defense cases by virtue of education and experience, can have a hard time getting acquainted with both OPD's culture and expectations, as well as the processes (and even personalities or idiosyncrasies) of practicing public defense law in Benton County. The On-Boarding program is designed to be an orientation that will help new contract defenders transition effectively into their new roles so as to make it as smooth as possible both for them and for their clients.

ON-BOARDING PROCESS

The on-boarding process consists of the following:

1. An orientation session and plan with supervisory staff at OPD which includes personal introductions to judges, prosecutors, and other public defenders, and an introduction to key court processes, docket responsibilities and forms with which new contractors should be familiar.
2. Providing the contract attorney with a comprehensive Contract Defender Manual which provides important information about contract obligations, OPD procedures, public defender resources, and court processes, including embedded hyperlinks to associated forms and documents. *The Contract Defender Manual is constantly updated as necessary to make sure that incoming contract defenders always have the most current information about changes as they come about.*
3. Pairing new contract attorneys with more experienced attorneys as necessary and requested, to provide mentorship resources and promote professional growth and retention.

PERFORMANCE STANDARDS MONITORING - DATA COLLECTION

Performance Standards Monitoring - Data Collection

WHAT IS DATA COLLECTION

The Data Collection Program uses the collection and review of multiple data points to provide a broad picture of public defender effectiveness and competence both on a general system-level basis and on an individual attorney basis.

WHAT DATA IS COLLECTED

A comprehensive set of Performance Standards data is collected from a number of different sources. The data points collected are all relevant to the quality of public defense services both as stated in the court's opinion in *Wilbur v. Mt. Vernon*, and in various other national studies.

DATA COLLECTED

DATA POINT	SOURCE	IMPORTANCE
Caseloads	Reports from public defenders as well as from the various courts.	Contractual obligations as well as Washington Public Defense Standards require that public defenders not exceed certain caseloads.
Jail and Juvenile Detention visits	Data received directly from Benton County Jail and Benton/Franklin Juvenile Detention Facility	It is critically important that public defenders visit their incarcerated clients so that they can keep them informed about their cases and so that the clients can ask questions or express concerns about the proceedings.
Trials held	Billings from defenders for contractually mandated trial per diems.	It is well understood that the decision whether or not proceed to trial is always that of the client so this is an indicator that is not entirely within the control of public defenders. Nevertheless, a nonexistent or extremely low number of cases going to trial can be an indication that public defenders are not effectively and aggressively defending cases.
RCW 10.77 Mental Health Evaluation motions filed	Reported directly by public defenders.	The number of private mental health evaluations by themselves are not <i>per se</i> indicative of the quality of public defense representation.

PERFORMANCE STANDARDS MONITORING - DATA COLLECTION

		However, this data point is being tracked because it is indicative of the higher complexity of cases and the accompanying need for additional professional, fiscal and training resources and is therefore useful for planning and forecasting.
Disposed of at trial readiness	Reported directly by public defenders	Quite often, even though public defenders have prepared to take a case to trial, prosecutors will make a more favorable offer (such as a Stipulated Orders of Continuance ² or Deferred Prosecution Agreements) which will be accepted at that time. Unless data regarding the number of such “Disposed of at readiness” cases is collected, then the number of trials held will not fairly represent the amount of effort public defenders are putting into defending their cases.
Key motions filed	Reported directly by public defenders.	Whether or not public defenders are regularly filing key motions (defined as motions that may be dispositive of the case or that may otherwise result in a significant advantage for the client in resolution of the case) is indicative of how much work they are putting into defending cases. While this is a strategic decision and therefore within the public defender’s exclusive decision-making authority, most public defenders defer to their clients when deciding whether to file motions since plea offers can change significantly when motions are filed.
Investigator usage	Collected through billings by investigators.	The effective defense of many felony cases, as well as some serious misdemeanors, requires the use of investigative services. Benton County provides investigative

² A Stipulated Order of Continuance (“SOC”) is a resolution that continues the case for a defined period of time at the end of which it would be dismissed, conditioned upon certain actions by the defendant as well as obedience to the law. SOCs are quite similar to Deferred Prosecution Agreements.

PERFORMANCE STANDARDS MONITORING - DATA COLLECTION

		services to support public defenders at no cost to them.
Private Mental health evaluations	Collected through billings by evaluators.	This data point measures the number of times public defenders have been dissatisfied with the “initial” evaluation conducted by Eastern State Hospital and request funding for a second “private” evaluation. As with the number of RCW 10.77 mental health evaluations, the number of private mental health evaluations by themselves are not <i>per se</i> indicative of the quality of public defense representation. However, this data point is being tracked because it is indicative of the higher complexity of cases and the accompanying need for additional professional, fiscal and training resources and is therefore useful for planning and forecasting.
Expert usage (including mental health experts)	Collected through billings by experts.	The effective defense of some felony cases, and the occasional serious misdemeanor (or misdemeanor involving mental health issues) requires the use of expert services. Benton County provides expert services to support public defenders at no cost to them.
Time spent on public defense cases	Collected directly from public defenders.	
Complaints filed against public defenders	Collected through OPD records.	Obviously formal complaints filed against public defenders by clients have the potential to be indicative of serious problems. All formal complaints (defined as complaints in writing by a client, stating a specific concern with a public defender’s performance in a case) are investigated by OPD and corrective or disciplinary action is taken as necessary.

PERFORMANCE STANDARDS MONITORING - DATA COLLECTION

HOW DATA IS REPORTED

To make the collected data more understandable, and to also account for caseload volume factors, the collected data is converted to “indices” as shown in the following table, and reported in OPD’s Quarterly Reports.

DATA CONVERSION		
DATA POINT	CONVERTED INTO	WHAT IT MEANS
Caseload	Not converted	n/a
Jail and Juvenile Detention Visits	Jail Visits Index	How many visits were made per thousand cases appointed.
Trials Held	Trials Index	How many trials were held per thousand cases appointed.
RCW 10.77 motions filed	10.77 Motions Index	How many RCW 10.77 motions were filed per thousand cases appointed.
Disposed of at Trial Readiness	Disposed of at Trial Readiness Index	How many cases per thousand were disposed of at trial readiness with a favorable resolution.
Key Motions Held	Motions Index	How many key motions were filed per thousand cases appointed.
Investigator Usage	Investigator Index	How many investigators were used per thousand cases appointed.
Mental Health Evaluations	Mental Health Evaluation Index	How many independent mental health evaluations were conducted per thousand cases appointed.
Expert Usage	Experts Index	How many experts were used per thousand cases appointed.
Time Spent on Public Defense Cases	Time Index	How much time was spent per case on average.
Complaints Against Public Defenders	Complaints Index	How many complaints were filed per thousand cases appointed.

Note on Calculating Performance Indices – Indices can be divided into two categories for purposes of calculation: **No Lag Indices** where there is little delay between the time of case appointment and the event being measured by the index, and **Lag Indices** where there is usually significant delay (60 to 90 days)

PERFORMANCE STANDARDS MONITORING - DATA COLLECTION

between the time of case appointment and the event being measured by the index³. No Lag Indices are calculated using the caseload of the current quarter. For better accuracy, and to account for the lag, Lag Indices are calculated using the caseload of the previous quarter.

NO LAG INDICES

Jail Visits Index

Detention Visits Index

Complaints Index

Motions Index

10.77 (mental health) Motions Index

Disposed at Trial Readiness Index

LAG INDICES

Mental Health Evaluations Index

Investigative Services Index

Expert Services Index

Trials Index

For example: Investigative Services Index is a Lag Index. Therefore, in calculating the Investigative Services Index for Q2 2015, the number of investigative services bills paid in Q2 2015 would be divided by the caseload from the previous quarter (Q1 2015) and multiplied by 1,000 for the index. On the other hand the Jail Visits Index is a No Lag Index. Therefore, in calculating the Jail Visits Index for the same Q2 2015, the number of jail visits for Q2 2015 would be divided by the caseload from the same quarter (Q2 2015) and multiplied by 1,000 for the index.

³ Since the numbers underlying these indices are collected based on billings, the time between appointment and the time services are rendered (averaging 30 days, possibly more with trial numbers) and the time between when services are rendered and billing is received (45-60 days) add up to usually result in billing occurring in the next quarter after case appointment.

PERFORMANCE STANDARDS MONITORING - COURT OBSERVATION

Performance Standards Monitoring - Court Observation

As useful as objective data may be in evaluating performance, it is not complete without actual observation of public defender in-court performance. Therefore, the second prong to the Performance Standards Monitoring Program is Court Observation.

WHAT IS COURT OBSERVATION

Court Observation is the actual in-court observation and evaluation of public defenders conducted by the Public Defense Manager or designee and is designed to ensure that each public defender has his/her in-court performance observed at least once per quarter.

WHAT IS EVALUATED DURING COURT OBSERVATION

Court Observation is conducted in a uniform manner and records are kept about the performance of public defenders both on a general docket and attorney/case-specific basis.

During each Court Observation session, the following information is recorded and performance criteria evaluated:

GENERAL DOCKET CRITERIA

CRITERIA	IMPORTANCE
Are all assigned defenders present (or, if not present, have they notified OPD and made arrangements for coverage)?	It is important for good client service, as well as for docket and judicial efficiency, that public defenders are in court when required.
Are all assigned defenders generally prepared and calling cases in an orderly fashion (Superior Court) or ready when their cases are called (other jurisdictions)?	
Does there appear to be excessive discussions in court with in-custody or out-of-custody clients prior to calling cases?	Public defenders are expected to meet with their clients in advance of court sessions. Meeting with clients in court not only disrupts the flow of court proceedings, but also increases the risk that clients have insufficient time to discuss issues or consider options. It is understood, however, that factors including uncooperative clients or shifting time frames, may make it difficult to meet with clients before court appearances.
Are any defenders not in the courtroom when required?	Clearly public defenders must be in court when required.
Are defenders sharing in responsibility of being available to stand in for arraignments or other "general duties" when needed?	Some "general docket" responsibilities are expected to be shared by public defenders on the docket. This usually relates to cases that are

PERFORMANCE STANDARDS MONITORING - COURT OBSERVATION

called before there is a formal assignment to a specific attorney (such as arraignments called in Superior Court).

ATTORNEY/CASE-SPECIFIC CRITERIA

CRITERIA	IMPORTANCE
In or Out-of-custody?	Cases where the client is in-custody always require more diligence and quicker action since speedy trial timeframes are shorter and continued incarceration has significant impacts on clients and their families.
Status of case	Careful attention is paid (and records kept) on the purpose of the hearing and what was (or wasn't) accomplished.
Was the case continued without much action taken and if so was there a reasonable justification?	Particular attention is paid to cases where nothing much is accomplished and the case is simply continued to another date. Excessive continuing of cases can be indicative of insufficient efforts to handle the case or other issues relating to attorney competence or efforts. Reasons for continuances are always noted and evaluated if provided on the record.
Any indication that client meetings outside of courtroom have taken place?	It is important that public defenders are meeting with clients before court.
Does defender appear prepared?	This indicator often goes hand in hand with indicators of client meetings before court. Obviously being prepared for court (and whatever transaction or action is being planned) is of paramount importance in effective representation.
Does defender appear effective in advocating for client?	Public defenders will be evaluated on their willingness and effectiveness in advocating for their clients. This includes, for example, their effectiveness in arguing for bail, addressing sentencing issues, and especially in advancing their client's interests when unexpected issues arise on the fly.
Any significant problems noted?	If any significant issues of concern are noted, then the time, case name and number, and details are noted for further follow up.

All Court Observation records are archived and indexed for easy retrieval. Contract public defenders are informed about the Performance Standards Monitoring Program and advised that the results of both the Data Collection and Court Observation prongs of the Program will be used to assist with contract award,

PERFORMANCE STANDARDS MONITORING - COURT OBSERVATION

transfer, and promotional decisions. When significant client complaints are received, the records collected through the Performance Standards Monitoring Program are also anticipated to be useful in resolving them appropriately.

Training

Benton County OPD has, and will continue to be, committed to supporting its public defenders by providing them with local, free, training on topics that relevant and helpful to their public defense practice through the OPD In-House Training Program. Training is always approved by the Washington State Bar Association for Continuing Legal Education (“CLE”) credits since OPD is an approved CLE training provider, and is also always provided at no cost to the taxpayers due to a fee waiver by the Bar Association and a network of attorneys and professionals who provide training at no cost.

TRAINING TOPICS

Training topics have included the following, in both classroom and workshop settings:

- Trial advocacy (various topics)
- Mental health resources and programs
- Working with mentally ill clients (including interviewing tips)
- Computer forensics
- Immigration law
- Crime scene forensics (including blood spatter and other forensics associated with violent crime)
- Arson forensics
- Audio forensics
- Juvenile dependency cases
- Defending legal financial obligation cases
- Presentation skills
- Defending DUI cases
- Cross-examination skills
- Using investigators in public defense cases
- Case law updates
- Dealing with the emotional stress of public defense work

NUMBER OF TRAINING HOURS

The number of training hours each year has been reported in the office’s Annual Reports. Since the inception of the program in 2010, over 80 hours of training has been provided through the OPD In-House Training Program

TRAINING



COMPLAINT INVESTIGATION & RESOLUTION

Complaint Investigation & Resolution

OPD has developed a very well-defined complaint resolution program for client complaints against public defenders. The program is intended to strike a balance between the many competing interests when it comes to complaints, including:

1. Accessibility to clients of complaint process
2. Limitation of complaint process to legitimate complaints only (ie weeding out complaints by anyone else other than clients except when clients are incapacitated or mentally ill)
3. Encouragement of clients and public defenders to take steps toward better working relationships before formal complaints are considered by clients
4. Facilitation of better client/public defender communication without a need for a formal complaint (and therefore preserving attorney-client relationships and leading to better representation and outcomes)
5. Thoroughness of investigations
6. Facilitation of quick and appropriate resolutions
7. Communication with clients

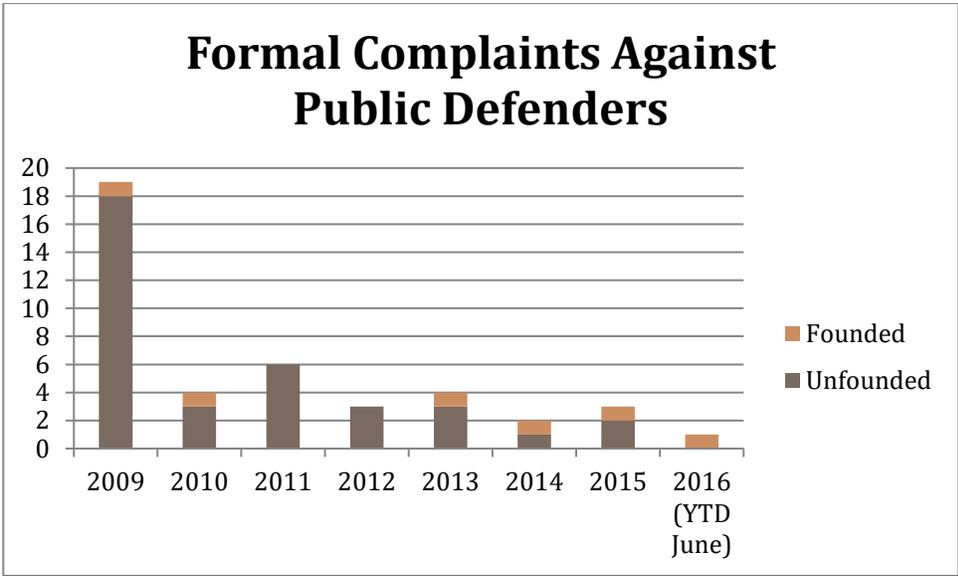
It features multiple and well-publicized ways for complaints to be received, a defined process (including timeframes) for investigation, and a clear resolution to each. More information about OPD's Complaint Investigation & Resolution Program can be found on the [Client Complaint page](#) of our website.

PROGRAM SUCCESS

The success of this program is apparent in the fact that unfounded complaints now comprise a significantly lower percentage of overall formal complaints than before with a number of recent founded complaints resulting in appropriate disciplinary action against contract defenders⁴. OPD has even received compliments from the State Office of Public Defense who has informed us that they even suggest other jurisdictions review OPD's [Client Complaint Page](#) when working on putting together their own policies and procedures.

⁴ In addition to outright contract termination, sometimes contract defenders are also offered contract caseload limitations or transfers to a more appropriate contract as a means of addressing problems raised.

COMPLAINT INVESTIGATION & RESOLUTION



Exit Interviews

The final piece to the quality control equation is conducting exit interviews with outgoing contract defenders and staff defenders (who are leaving on good terms). Through experience, it is quite apparent that feedback received is much more honest and candid when contract and continued employment considerations are no longer a factor. Still a work in progress, the ultimate goal of exit interviews is to use a combination of in-person interviews and on-line questionnaires to gather as much information as possible about what OPD is doing well and should continue doing, what OPD is not doing well and should discontinue or do differently, and what practices OPD may want to consider incorporating.

CONCLUSION

Conclusion

Ensuring the quality of public defense services is the number one priority at the Benton County Office of Public Defense. This whitepaper has outlined OPD's multi-faceted approach to monitoring public defense quality. As Benton County and OPD's needs change and evolve, and as the legal landscape of public defense in Washington State changes, modifications will be made to this approach. If you are interested in learning more about OPD's operations or changes to its public defense quality monitoring efforts, please visit [OPD's website](http://BentonCountyDefense.org) (BentonCountyDefense.org) and review its [Annual Reports and Strategic Plans](#).

Special note about Performance Standards Monitoring: The results of the Data Collection prong of Performance Standards Monitoring are published in [OPD's Quarterly Reports](#). Quarterly Reports are posted on OPD's website after they have been presented formally to the Benton County Board of County Commissioners.