

SNOHOMISH COUNTY COUNCIL  
PUBLIC HEARING PACKET

**Motion 21-285**

**Companion to  
Ordinance 21-049**

**APPROVING AND RATIFYING THE AGREEMENT  
BETWEEN SNOHOMISH COUNTY AND THE STATE OF  
WASHINGTON, OFFICE OF PUBLIC DEFENSE FOR THE  
PURPOSE OF PROVIDING INDIGENT DEFENSE  
REPRESENTATION PURSUANT TO *STATE V. BLAKE***

ECAF: 2021-0640

Date/Time: Wednesday, September 22, 2021, at 10:30 a.m.

Staff Person: Jim Martin

DPA:

**EXHIBIT LIST**

***Click on Exhibit # to view document.***

<b>Exhibit #</b>	<b>Date</b>	<b>Exhibit Description</b>
<b><a href="#">1</a></b>	8/20/21	Council Staff Report
<b><a href="#">2</a></b>	8/20/21	ECAF Received
<b><a href="#">3</a></b>	6/23/21	State Office of Public Defense Agreement

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 21-285

APPROVING AND RATIFYING THE AGREEMENT BETWEEN  
SNOHOMISH COUNTY AND THE STATE OF WASHINGTON, OFFICE OF PUBLIC  
DEFENSE FOR THE PURPOSE OF PROVIDING INDIGENT DEFENSE  
REPRESENTATION PURSUANT TO *STATE V. BLAKE*

WHEREAS, the Washington State Supreme Court announced its opinion in State v. Blake that all previous convictions for simple drug possession were unconstitutional; and

WHEREAS, the State Office of Public Defense has awarded Snohomish County \$97,047 for Fiscal Year 2021 for representation of eligible persons impacted by State v. Blake; and

WHEREAS, the Snohomish County Office of Public Defense signed an agreement on June 23, 2021, for receipt of funds for public defense services pursuant to State v. Blake; and

WHEREAS, the Snohomish County Council is vested with the authority to approve the agreement with the state and agrees that this agreement is in the best interest of the County;

NOW, THEREFORE, ON MOTION, the Snohomish County Council ratifies the agreement between the State Office of Public Defense and Snohomish County entered into on June 23, 2021, and authorizes the County Executive to sign the agreement and execute the conditions thereof.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

\_\_\_\_\_  
Council Chair

ATTEST:

\_\_\_\_\_  
Asst. Clerk of the Council



Snohomish County Council

SNOHOMISH COUNTY COUNCIL

EXHIBIT # 1

FILE MOT. 21-285

**Committee:** Finance  
**ECAF:** 2021-0640  
**Proposal:** Mot. 21-285

**Analyst:** Jim Martin  
**Date:** August 20, 2021

**Consideration:**

Approving and ratifying the agreement between Snohomish County and the State of Washington, Office of Public Defense for the purpose of providing indigent defense representation pursuant to State v. Blake.

**Background**

The Washington State Office of Public Defense has awarded Snohomish County \$97,047 for Fiscal Year 2021 for representation of eligible persons impacted by the Washington State Supreme Court State v. Blake decision, in which convictions for simple drug possession was unconstitutional. On June 23<sup>rd</sup>, the Snohomish County Office of Public Defense signed an agreement for receipt of the funds awarded. Ratification if that agreement is now sought by Council, which is vested with the authority to approve the agreement.

**Current Proposal**

This motion ratifies the agreement between the State Office of Public Defense and Snohomish County entered into on June 23, 2021, and authorizes the County Executive to sign the agreement and execute the conditions thereof.

*Duration:* Through December 31, 2021

*Fiscal Implications:* Revenue of \$97,047.00

**2021 Budget:** No. This motion is intended as a companion to Ordinance 21-049, which allocates the revenue and expenditure of these funds.

**Future Budget Impacts:** None.

**Handling:** Expedite

**Approved-as-to-form:** N/A.

**Risk Management:** N/A.

**Executive Recommendation:** APPROVE.

**Attachments:** See ECAF packet.

**Amendments:** NONE.

**Request:** Move to Public Hearing calendar on September 22<sup>nd</sup> for consideration with Ordinance 21-049.



Legislation Text

File #: 2021-0640, Version: 1

**Executive/Council Action Form (ECAF)**

**ITEM TITLE:**

Motion 21-285, approving and ratifying the Agreement between Snohomish County and the State of Washington, Office of Public Defense for the purpose of providing indigent defense representation pursuant to *State v. Blake*

**DEPARTMENT:** Office of Public Defense

**ORIGINATOR:** Jason Schwarz

**EXECUTIVE RECOMMENDATION:** Approve

**PURPOSE:** Approve and Ratify the Agreement Between Sno. Co. and WA State Office of Public Defense for 2021

**BACKGROUND:** In February, the Washington State Supreme Court announced its opinion in State v. Blake, 481 P. 3d 521 (2021) that all previous convictions for simple drug possession were unconstitutional. Any person with a conviction for simple possession has a right to have the unconstitutional conviction vacated from their record. Vacating convictions and resentencing requires substantial and dedicated work by public defenders on behalf of their clients entitled to a legal remedy. In June of 2021, the Washington State Office of Public Defense notified the Snohomish County it had been selected to receive funds for representation of individuals on cases impacted by State v. Blake. This motion is necessary to ratify the agreement with the State Office of Public Defense so that funds can be accepted and dispersed for legal representation in Blake cases.

**FISCAL IMPLICATIONS:**

EXPEND: FUND, AGY, ORG, ACTY, OBJ, AU	CURRENT YR	2ND YR	1ST 6 YRS
002.5321274107	97,047		
<b>TOTAL</b>	97,047		

REVENUE: FUND, AGY, ORG, REV, SOURCE	CURRENT YR	2ND YR	1ST 6 YRS
002.332127xxxx	97,047		

<b>TOTAL</b>	97,047		

**DEPARTMENT FISCAL IMPACT NOTES:** Click or tap here to enter text.

**CONTRACT INFORMATION:**

ORIGINAL	x	CONTRACT#	GRT21052	AMOUNT	97,047
AMENDMENT		CONTRACT#		AMOUNT	

**Contract Period**

ORIGINAL	START	6/28/21	END	12/31/21
AMENDMENT	START		END	

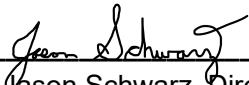
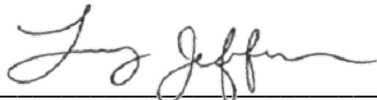
**OTHER DEPARTMENTAL REVIEW/COMMENTS:** Approved/Reviewed by Finance & Risk

FACE SHEET

EXHIBIT # 3

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

FILE MOT. 21-285

<p><b>1. Recipient</b>                  Snohomish County                  3000 Rockefeller, MS 209                  Everett, WA 98201</p>	<p><b>2. Recipient Representative</b>                  Jason Schwarz                  Director                  Snohomish County Office of Public Defense                  3000 Rockefeller, MS 209                  Everett, WA 98201</p>
<p><b>3. Office of Public Defense (OPD)</b>                  711 Capitol Way South, Suite 106                  PO Box 40957                  Olympia, WA 98504-0957</p>	<p><b>4. OPD Representative</b>                  Katrin Johnson                  Managing Attorney                  Office of Public Defense                  711 Capitol Way South, Suite 106                  PO Box 40957                  Olympia, WA 98504-0957</p>
<p><b>5. Distribution Amount</b>                  \$97,047.00</p>	<p><b>6. Use Period</b>                  June 28, 2021 through December 31, 2021</p>
<p><b>7. Purpose</b>                  Distribution of funds for the purpose of providing indigent defense representation for eligible persons seeking to vacate felony convictions and/or to be re-sentenced pursuant to <i>State v. Blake</i>, 481 P.3d 521 (2021).</p>	
<p>The Office of Public Defense (OPD) and Recipient, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start June 28, 2021 and end December 31, 2021. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Special Terms and Conditions, and General Terms and Conditions.</p>	
<p><b>FOR RECIPIENT</b></p> <p>                  _____                  Jason Schwarz, Director                  Snohomish County Office of Public Defense                  Name, Title</p> <p>6/23/21                  _____                  Date</p>	<p><b>FOR OPD</b></p> <p>                  _____                  Larry Jefferson, Director</p> <p>6/23/2021                  _____                  Date</p>

## SPECIAL TERMS AND CONDITIONS

### 1. AGREEMENT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications regarding the performance of this Agreement.

- a. The Representative for OPD and their contact information are identified on the Face Sheet of this Agreement.
- b. The Representative for Recipient and their contact information are identified on the Face Sheet of this Agreement.

### 2. DISTRIBUTION AMOUNT

The Distribution Amount is **ninety-seven thousand forty-seven** and 00/100 Dollars (\$97,047.00) to be used for the purpose(s) described in the USE OF FUNDS below.

### 3. DEFINITIONS

- a. "*Blake Clients*" means eligible indigent persons seeking to vacate convictions and/or to be re-sentenced pursuant to *State v. Blake*, 481, P.3d 521 (2021).
- b. "*Blake Cases*" means post-conviction cases potentially impacted by *State v. Blake* to which indigent counsel is assigned.

### 4. USE OF FUNDS

- a. Recipient shall use the funds to provide felony post-conviction defense representation to eligible *Blake Clients* on *Blake Cases*.
- b. Recipient shall use the funds for the following purpose(s) for defense representation of *Blake Clients* on *Blake Cases*:
  - i. Defense attorney compensation;
  - ii. Compensation of defense attorney support staff;
  - iii. Defense investigation;
  - iv. Costs incurred by defense counsel for communicating with *Blake Clients* or potential *Blake Clients* in correctional facilities; and
  - v. Other related expenditures not listed in this section, but approved and authorized in writing by OPD staff.
- c. Recipient agrees that representation of *Blake Clients* on *Blake Cases* shall count as at least one-half of a felony case for purposes of measuring defense attorney caseloads and certifying compliance to the Washington Supreme Court's Standards for Indigent Defense in Superior Court Criminal Rule 3.1.
- d. To the extent possible, assignment of counsel to *Blake Clients* shall be prioritized for individuals currently serving sentences under the Washington State Department of Corrections.
- e. Recipient shall use the funds in calendar year 2021. If Recipient is unable to use the funds in 2021, Recipient shall notify OPD to determine what action needs to be taken.
- f. Recipient shall deposit the funds check within 14 days of receipt.

### 5. OVERSIGHT

- a. No later than July 15, 2021, Recipient shall provide to OPD written notice of the attorneys in Snohomish County who are designated to provide representation to *Blake Clients*.
- b. No later than August 1, 2021, Recipient shall post information and instructions on their county website for members of the public seeking relief under *State v. Blake*, and Recipient shall provide that web address to OPD.
- c. By January 31, 2022, Recipient shall provide a written statement to OPD containing:

- i. A brief written narrative describing the county's efforts to provide representation in *Blake Cases*; and
- ii. The number of individuals receiving services that were funded by this Agreement.

6. **ORDER OF PRECEDENCE**

In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable federal and state of Washington statutes, regulations, and court rules
- b. Special Terms and Conditions
- c. General Terms and Conditions



## GENERAL TERMS AND CONDITIONS

1. **ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

2. **AMENDMENTS**

This Agreement may be amended by mutual agreement of the parties. Such amendment shall not be binding unless it is in writing and signed by personnel authorized to bind each of the parties.

3. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 29 CFR Part 35.**

Recipient must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

4. **ASSIGNMENT**

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by Recipient without prior written consent of OPD.

5. **ATTORNEY'S FEES**

Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney fees and costs.

6. **CONFORMANCE**

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

7. **ETHICS/CONFLICTS OF INTEREST**

In performing under this Agreement, Recipient shall assure compliance with the Ethics in Public Service, Chapter 42.52 RCW and any other applicable court rule or state or federal law related to ethics or conflicts of interest.

8. **GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9. **INDEMNIFICATION**

To the fullest extent permitted by law, Recipient shall indemnify, defend, and hold harmless the state of Washington, OPD, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the performance or failure to perform the Agreement.

10. **LAWS**

Recipient shall comply with all applicable laws, ordinances, codes, regulations, court rules, policies of local and state and federal governments, as now or hereafter amended.

11. **NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Agreement, Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of Recipient's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part.

12. **RECAPTURE**

In the event that Recipient fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of the Agreement, OPD reserves the right to recapture funds in an amount to compensate OPD for the noncompliance in addition to any other remedies available at law or in equity.

13. **RECORDS MAINTENANCE**

Recipient shall maintain all books, records, documents, data and other evidence relating to this Agreement. Recipient shall retain such records for a period of six (6) years following the end of the Agreement period. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

14. **RIGHT OF INSPECTION**

At no additional cost all records relating to Recipient's performance under this Agreement shall be subject at all reasonable times to inspection, review, and audit by OPD, the Office of the State Auditor, and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Agreement. Recipient shall provide access to its facilities for this purpose.

15. **SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

16. **WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing.