

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 25-026

APPROVING AND AUTHORIZING THE SNOHOMISH COUNTY EXECUTIVE TO EXECUTE THE AGREEMENT FOR LEGAL SERVICES TO CONTRACT WITH SNOHOMISH COUNTY PUBLIC DEFENDER ASSOCIATION, FOR THE PERIOD FROM JANUARY 1, 2025, TO DECEMBER 31, 2025

WHEREAS, the Snohomish County Council and County Executive recognize the need to provide legally mandated indigent defense services in criminal cases where incarceration is possible; and

WHEREAS, through this negotiated contract with the Snohomish County Public Defender Association, the County will continue to provide mandated legal services for the indigent defendants; and

WHEREAS, the Snohomish County Public Defender Association has the experience, expertise, and capacity to provide the contracted indigent legal defense services needed in Snohomish County courts;

NOW, THEREFORE ON MOTION, the Snohomish County Council authorizes the County Executive to sign the attached contract and any amendments thereto in accordance with Snohomish County Code Section 3.04.140(4) with Snohomish County Public Defender Association to provide legal services to indigent defendants according to the terms therein from January 1, 2025, through December 31, 2025.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

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

ATTEST:

\_\_\_\_\_  
Deputy Clerk of the Council

**CONTRACT FOR**  
**SNOHOMISH COUNTY PUBLIC DEFENDER PROGRAM**

THIS AGREEMENT (“Contract”) is entered into by and between SNOHOMISH COUNTY a political subdivision of the State of Washington (“County”) and the SNOHOMISH COUNTY PUBLIC DEFENDER ASSOCIATION, a Washington non-profit corporation (“Association”). In consideration of the terms and conditions set forth herein, the parties agree as follows:

1. **Definitions.**

"Administrator" means the Snohomish County Attorney Administrator in the Office of Public Defense or designee.

"Association" means the Snohomish County Public Defender Association -- a private non-profit corporation incorporated under the Articles of Incorporation and Certificate issued by the Secretary of State of the State of Washington on December 14, 1983, File Number 2-338829-1, pursuant to the provisions of the Washington Non-Profit Corporation Act (Chapter 24.03 RCW).

"Client" means (a) any person who is referred to the Association by the Administrator and/or the respective court in which the person has been charged with a crime, or has a civil right to counsel. This term also refers to (b) persons who are unrepresented by other counsel and have contacted the Association for information and legal counsel has been provided, unless referred to the Association as described above.

"County" means Snohomish County, Washington.

"Director" means the Director of the Snohomish County Public Defender Association.

"Executive" means the Snohomish County Executive or designee.

"Indigent Person" means any person unable to afford to hire or retain legal counsel, as such person is defined by current case law, statute, or applicable Court Rule(s).

"Public Defender Program" means all rights, responsibilities, duties, benefits, and operations arising out of this Contract, the purpose of which shall be to provide legal representation for adult indigent criminal defendants and juveniles in juvenile offender cases as required by law.

"Staff Attorney" means any attorney who is an employee of the Snohomish County Public Defender Association performing services under this Contract, and whose compensation, salary, or wages are paid from monies derived from the Contract.

2. **Scope of Service to be Performed by Association.** The Association shall manage and operate the Snohomish County Public Defender Program. The purpose and scope of services are as defined in **Schedule A** attached hereto and by this reference made a part of this Contract.

3. **Duration of Contract.** This Contract shall commence on the 1<sup>st</sup> day of January, 2025,

and shall terminate on the 31<sup>st</sup> day of December, 2025, unless extended or terminated earlier, pursuant to the terms and conditions of the Contract; provided that all obligations of the County under the Contract after December 31, 2025, are contingent upon continuing local legislative appropriation of necessary funds for this specific purpose in accordance with applicable laws.

4. **Records and Reports.** The Association will maintain such records and make reports to the County as provided in **Schedule B** attached hereto and by this reference made part of the Contract.

5. **Compensation.** The County shall pay the Association **\$16,736,946.31** for the services defined in Schedule A; provided that all obligations of the County under the Contract after December 31, 2025, are contingent upon continuing local legislative appropriation of necessary funds for this specific purpose in accordance with applicable laws.

6. **Direction and Control.** The Association agrees that it will perform the services under this Contract as an independent contractor and not as an agent, employee, or servant of the County. The parties agree that the Association is not entitled to any benefits or rights enjoyed by employees of the County. The Association specifically has the right to direct and control its own activities in providing the agreed services in accordance with the specifications set out in this Contract. County shall only have the right to ensure performance.

7. **Interest of Members of County.** No officer, employee, or agent of the County who exercises any function or responsibility in connection with planning and carrying out the Public Defender Program, or any other person who exercises any function or responsibility in connection with it shall have any personal financial interest, direct or indirect, in this Contract. The Association shall take appropriate steps to assure compliance with this requirement.

8. **Warranty of Authority.** The Association represents and warrants that it has the authority to enter into and execute this Contract and will defend any disciplinary or judicial proceedings brought questioning its right and authority to conduct the Public Defender Program. The Association acknowledges that this Contract is made pursuant to and in reliance upon the presaid representation and warranty.

9. **Reservation Regarding Representation.** The Association, on behalf of its attorneys, and each attorney employed by the Association, reserve the right to decline to advise or represent any indigent or otherwise eligible person on the basis of actual or potential legal, ethical, or professional conflict of interest, and with the consent of the court may withdraw from representing any particular person for good cause shown. In such event, the Association will immediately inform the Administrator in writing of such declination and the specific reason therefore, and will request appointment of other counsel for such person.

10. **Changes.** No changes or additions shall be made in this Contract except as agreed to by both parties and reduced to writing and executed with the same formalities as are required for the execution of this Contract. The parties may meet and discuss proposed modifications, if any, to this Contract, following submission of a report by the Executive to the County Council which:

- a. Describes all pertinent information regarding the Association's performance under this Contract;
- b. Discusses any significant difficulties or problems encountered during the term of the Contract; and
- c. Investigates and recommends any reasonable, cost-effective alternatives or improvements to the current Public Defender Program.

Nothing contained in this Contract shall be deemed to preclude any party from seeking modification of any term contained herein should an unforeseen and material change in circumstances arise. Any proposed modification shall first be presented to the other party for review and approval. If approval of such proposed modification is not received within fifteen (15) days, the matter may be resolved as provided in Section 19.

11. **Access to Books and Records; Audits and Inspections.** Except as prohibited by the attorney rules of professional conduct and the attorney-client privilege, all records of the Association on any matter covered by this Contract shall be made available to the Administrator, the County and/or the State Auditor at any time during normal business hours, and as often as such parties may reasonably deem necessary. The Association will permit such parties to audit, examine and make copies, excerpts or transcripts from any records, and shall allow such parties to audit all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other non-confidential data relating to any matters covered by the Contract. In addition to the audit requirements defined above, the Association will participate in a performance audit paid for by the County.

12. **Hold Harmless.** The Association shall hold harmless, indemnify and defend the County, its officers, officials, employees, and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Association's acts, errors or omissions in the performance of this Contract, or those of Association's employees, agents, or subcontractors. PROVIDED HOWEVER, that the Association's obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the County, its officers, officials, employees, or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the Association's indemnity obligations hereunder shall apply only to the percentage of fault attributable to the Association, its employees, agents, or subcontractors.

With respect to the Association's obligations to hold harmless, indemnify and defend provided for herein, but only as such obligations relate to claims, actions, or suits filed against the County, the Association further agrees to waive its immunity under the Industrial Insurance Act, Title 51 RCW, for any injury or death suffered by the Association's employees

caused by or arising out of the Association's acts, errors, or omissions in the performance of this Contract. This waiver is mutually negotiated by the parties.

The Association's obligation hereunder shall include, but is not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, omission, or breach of any common law, statutory, or other delegated duty by the Association, Association's employees, agents, or subcontractors.

13. **Insurance.** The Association shall procure by the time of execution of this Contract, and maintain for the duration of this Contract, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Association, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a "claims made" basis. If coverage is approved and purchased on a "claims made" basis, the Association warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Contract.

By requiring the minimum insurance coverage set forth in this Section 13, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Association under this Contract. The Association shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

b. No Limitation on Liability. The Association's maintenance of insurance as required by this Contract shall not be construed to limit the liability of the Association to the coverage provided by such insurance, or otherwise limit the County's recourse to any remedy available at law or in equity.

c. Minimum Scope and Limits of Insurance. The Association shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;

(ii) Automobile Liability: \$ N/A combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;

(iii) Workers' Compensation: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Contract;

(iv) Employers' Liability or "Stop Gap" coverage: \$1,000,000;

(v) Professional Liability: \$1,000,000;

(vi) Employee Dishonesty/Fidelity: \$50,000.

d. Other Insurance Provisions and Requirements. The insurance coverages required in this

Contract for all liability policies except Workers' Compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Association in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees, and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2026 07/04" or its equivalent is required.

(ii) The Association's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Association's liability to the County and shall be the sole responsibility of the Association.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Association shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

e. Subcontractors. The Association shall include all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by subcontractors instead of the Association as evidence of compliance with the insurance requirements of this Contract shall be subject to all the requirements stated herein.

14. **Compliance with Laws.** The Association shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

15. **Non-discrimination.** It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Association shall comply with Chapter 2.460 SCC, which is incorporated herein by this reference. Execution of this contract constitutes a certification by the Association of the Association's compliance with the requirements of Chapter 2.460 SCC. If the Association is found to have violated this provision or furnished false or misleading information in an investigation or proceeding conducted pursuant to Chapter 2.460 SCC, this contract may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Association's obligations under other federal, state, or local laws against discrimination.

16. **Public Records Act.** This Contract and all public records associated with this Contract shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Association are needed for the County to respond to a request under the Act, as determined by the County, the Association agrees to make them promptly available to the County. If the Association considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected from disclosure under law, the Association shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Association and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Association (a) of the request and (b) of the date that such information will be released to the requester unless the Association obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Association fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Association to claim any exemption from disclosure under the Act. The County shall not be liable to the Association for releasing records not clearly identified by the Association as confidential or proprietary. The County shall not be liable to the Association for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

17. **Termination.** The County may suspend or terminate payments pursuant to this Contract, in whole or in part, only after cause has been established by final judgment of the arbitration panel pursuant to Section 19 of this Contract. Cause shall include the following:

- a. Ineffective or improper use of Contract funds or compensation;
- b. Failure to comply with either the terms and conditions of this Contract, or with the Public Defender Program; or
- c. Submittal to the County of reports that are incorrect or incomplete in any material respect or which are fraudulent.

18. **Non-Assignment.** The Association shall not sublet or assign any of the rights, duties,

or obligations covered by this Contract without the prior express written consent of the County.

19. **Disputes and Arbitration.** Disputes or claims arising under this Contract between the County and the Association shall initially be resolved by consultation between the Director of the Association and the Administrator, and are to be resolved in accordance with the laws of the State of Washington. If resolution of such dispute or claim is not obtained within fifteen (15) days of such consultation, the matter shall, at the request of the County or Association, be submitted to a three-person panel for final, binding arbitration. Such panel shall consist of three members, one of which shall be selected by the County Executive, one selected by the Association, and the third selected jointly by the other two members. Decision by the panel shall be reached by simple majority vote of its members, and shall be rendered within twenty-one (21) days of submittal of any such matter to it.

20. **Conflicts Between Attachments and Text.** Should any conflicts exist between any attached exhibit or schedule and the text of this Contract, the text shall prevail.

21. **Governing Law and Venue.** This Contract shall be governed by the laws of the State of Washington and any lawsuit regarding this Contract must be brought in Snohomish County, Washington.

22. **Integrated Document.** This Contract embodies the entirety of the agreement between the County and the Association for enactment and operation of the Public Defender Program, its terms, and conditions. No verbal agreements, conversations, understandings, or writings with any officer, agent, or employee of the County prior to the execution of this Contract shall affect or modify any of the terms, conditions, or obligations contained in any documents comprising this Contract. Any such verbal agreements, conversations, understandings, or writings shall be considered as unofficial and in no way binding upon the County.

23. **Approvals and Notices.** Except as otherwise provided under this Contract, when County approval, authorization, waiver, instructions, or determinations are required, they shall be effective only when given:

- a. In writing and signed by the Executive; or
- b. With respect to fiscal procedures, in writing and signed by the Executive or the Snohomish County Director of Finance.

24. **When Rights and Remedies Are Not Waived.** In no event shall any payment by the County or acceptance of payment by the Association constitute or be construed to be a waiver by such party of any breach of contract, covenant, or default which may then exist on the part of the other. The making or acceptance of any such payment while any such breach of default shall exist shall in no way impair or prejudice any right or remedy available with respect to such breach of default.

25. **Severability.** If any provisions of this Contract are held invalid, the remainder of the Contract shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.



"County"

"Association"

SNOHOMISH COUNTY:

SNOHOMISH COUNTY PUBLIC DEFENDER ASSOCIATION

\_\_\_\_\_  
Dave Somers Date  
County Executive

*/s/ Linda C. Krese 12/30/24*  
\_\_\_\_\_  
Linda Krese Date  
President, Board of Directors  
Snohomish County Public Defender  
Association

Approved as to form only:

*/s/ Sean Reay 12/30/2024*  
\_\_\_\_\_  
Deputy Prosecuting Attorney Date

**Baer, Diane** Digitally signed by Baer, Diane  
Date: 2024.12.30 14:23:10 -08'00'  
\_\_\_\_\_  
Risk Management Date

## Schedule A

### THE PUBLIC DEFENDER PROGRAM

The Snohomish County Public Defender Program provides effective assistance of counsel for indigent persons charged with criminal offenses in the County's superior and district courts and for juveniles charged with juvenile offenses in the juvenile court.

#### **A. STANDARDS FOR THE DELIVERY OF PUBLIC DEFENSE SERVICES**

The County adopts the following standards for the delivery of Public Defense Services, pursuant to RCW 10.101.030 and Snohomish County Code 2.09.080:

1. Compensation of Counsel: The County and Association aspire to provide salaries and benefits for the attorneys and staff working in the Public Defender Program in parity with the salaries and benefits provided to the attorneys and staff of the Snohomish County Prosecuting Attorney;
2. Duties and Responsibilities of Counsel: The duties and responsibilities of counsel shall be as set out in **Section C** of this Schedule;
3. Case Load Limits and Types of Cases: The County recognizes the case load standards adopted by the Washington State Bar Association. These standards constitute a goal for the County in its budgeting for the Public Defender Program and for the Association in its allocation of resources;
4. Responsibility for Expert Witness Fees and Other Costs Associated with Representation: Expert witness fees and other costs associated with representation are paid from resources as approved by the Office of Public Defense in Superior Court and Juvenile cases and District Court cases;
5. Administrative Expenses: Administrative expenses shall be paid out of the compensation for the Association;
6. Reports of Attorney Activity and Vouchers: The Association shall provide reports of attorney activity and vouchers as provided in **Schedule B**;
7. Training Supervision Monitoring and Evaluation of Attorneys: The Association shall provide for the training, supervision, monitoring, and evaluation of its attorneys;
8. Substitution of Attorneys or Assignment of Contracts: The Association shall determine the Staff Attorney to be assigned to a particular client and any substitutions that need to be made with that representation within the office. Substitution of counsel to an attorney outside the Association shall be made by the Administrator upon authorization of the Court. No portion of this Contract may be assigned without the authorization of the Executive;

9. Limitations on Private Practice of Association Attorneys: Staff Attorneys with the Association may provide legal services on a non-fee basis to persons who are not clients of the Association so long as it does not interfere with the efficient performance of the attorney's duties, does not conflict with the duties of the Association under this Contract, and is done outside of the attorney's assigned working hours with the Association. With the approval of the Administrator, the Association may also represent an indigent person charged in another county that is a conflict within that county's public defense system. Any such legal services shall be the sole responsibility of the Association and/or Association attorneys, and are wholly independent of services provided under this Contract;

10. Qualification of Attorneys: The Association shall act through attorneys licensed to practice law in the State of Washington, and through authorized assistants and shall assign only such cases to a Staff Attorney as the attorney is qualified by training and experience to handle;

11. Disposition of Client Complaints: The Association shall maintain procedures for receiving and responding to the complaints of its clients;

12. Cause for Termination of Contract or Removal of Attorney: Termination of this Contract shall be in accord with the provisions of Section 17 of the Contract. The termination of the employment of any Staff Attorney is solely within the authority of the Association;

## **B. DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION**

In order to perform its responsibilities under the Contract, the Association shall

1. Hire all Public Defender Association personnel;
2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payment of unemployment compensation, payment of worker compensation and industrial insurance taxes (where applicable), and employee benefits;
3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as needed;
4. Suspend or remove personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging in or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Public Defender Program;
5. Report regularly to the Administrator on the characteristics of clients and cases, statistical analysis of participants, and need for remedial services, and such other data as may be necessary for proper evaluation during the progress of the Public Defender Program;

6. Cooperate with the Administrator in the evaluation of the Program;
7. Cooperate with the Administrator in seeking and implementing cost-saving alternatives to the Public Defender Program, and in developing methods to reduce the cost of appointing legal counsel to represent indigent persons;
8. Immediately notify the Administrator of any direct appointments made by the Judges of the respective County courts;
9. Accept and represent all cases and clients officially referred by the Administrator unless withdrawal from such representation is allowed in accordance with this section;
10. Upon receipt from the prosecuting attorney of discovery or a witness list for a Superior Court or District Court case, conduct a search of the Association database to determine if there is a conflict of interest and immediately inform the Administrator if a conflict of interest is discovered.
11. In the event that this Contract is terminated or not renewed, complete representation of all clients who have been referred by the Administrator during the period in which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear.

### **C. DUTIES AND RESPONSIBILITIES OF STAFF ATTORNEYS**

In order to perform their duties under this Contract, Staff Attorneys of the Association shall:

1. Advise and provide immediate legal assistance to all clients who request legal assistance during investigative stages by police or other prosecutorial agencies; or who are un-represented by other counsel and have contacted the Association regarding criminal or juvenile offender matters occurring in the County; or who are detained in the Snohomish County Jail or other places of detention within the County. Such requested legal assistance shall include:
  - (a) Legal counseling of suspects during investigative stages;
  - (b) Presence at lineups, interrogations, interviews by police and physical examinations in which the suspect participates;
  - (c) Aid in securing conflict counsel through the Office of Public Defense where a legal, ethical, or professional conflict arises;
2. Counsel and represent in all ensuing criminal and juvenile offender proceedings before appeal those clients who are officially referred by the Administrator. Such services include, but are not limited to: preparation for and representation of the client at the trial and at the sentencing or disposition hearing. Such services do not include representation in matters which are civil rather than criminal in nature except as herein provided;
3. Counsel clients with regard to their rights to appellate review and file any necessary notice for appellate review when requested by a client;
4. Counsel and represent those persons against whom petitions have been filed in the Snohomish County Superior Court for involuntary civil commitment under RCW Chapters 71.05 (Mental Illness).
5. Representation shall be prompt and delivered in a professional, skilled manner consistent with minimum standards set forth by these *WSBA Standards*, the Washington Supreme Court's *Court Rule Standards* (CrR 3.1, CrRLJ 3.1, JuCR 9.2, and CCR 2.1), the American Bar Association, the Washington Rules of Professional Conduct, case law and relevant court rules and orders defining the duties of counsel. The applicable WSBA or ABA Performance Guidelines should serve as guidance for attorney performance.

### **D. RIGHTS AND RESPONSIBILITIES OF THE COUNTY**

In addition to its obligations herein prescribed, the County shall have the right to:

1. Audit fiscal records, with full power to:

- (a) Prescribe adequate accounting procedures and internal controls to prevent misappropriation of funds;
  - (b) Direct compliance with the terms of this Contract and with applicable State law and County ordinances;
  - (c) Prohibit conduct or activities contrary to applicable State laws and County ordinances.
2. Monitor the operations and administration of the Public Defender Program. Such monitoring shall include such activities as are reasonable and necessary to assure the funds allocated to the Association are being used effectively and efficiently to accomplish the purposes for which the funds were made available, including but not limited to:
- (a) Inspecting facilities and equipment;
  - (b) Ascertaining the quality of performance and the results thereof; and
  - (c) Offering criticism and suggestions for improved performance and service.

**E. PROFESSIONAL CONDUCT**

The Association shall maintain the Public Defender Program independent of any governmental control, except as provided in this Contract. Attorneys employed by the Association shall represent clients, preserve client confidences, and discharge their duties hereunder in accordance with the Rules of Professional Conduct pertaining to attorneys licensed to practice law in the State of Washington, applicable Court rules, and in accordance with standards applied to private attorneys defending paying clients and the Standards for Public Defense Services adopted by the Washington State Bar Association.

- 1. Exercise of Professional Judgment: Nothing in this Contract shall be construed to impair or inhibit the exercise of independent professional judgment by an attorney employed by the Association with respect to any client wherein an attorney-client relationship has been established pursuant to the terms of this Contract;
- 2. Standards of Professional Conduct: Nothing in this Contract shall require or authorize any attorney to perform any acts in any manner proscribed by, or neglect to perform any duties required by, the Rules of Professional Conduct promulgated by the Supreme Court of the State of Washington as now or hereafter amended, or required or proscribed by applicable case law, Court rules or statute. This Contract shall neither require nor authorize any attorney to engage in any conduct deemed improper or unethical in opinions of the Washington State Bar Association.
- 3. Attorney-Client Privilege: Nothing in this Contract shall require or permit, without consent of the client concerned, access to or disclosure of:

- (a) Any confidential communication made by a client to any attorney employed by the Public Defender Association or any such confidential communications made to agents or employees of the Association for such attorney;
  - (b) The advice given by an attorney to a client;
  - (c) The mental impressions, legal research or legal theories and strategies of counsel in preparation and presentation of legal proceedings undertaken pursuant to this Contract; and
  - (d) Any other statements and materials privileged from disclosure in a court of law.
4. Attorneys Prohibited from Soliciting/Accepting Compensation From Clients: Attorneys employed by the Association shall not solicit or accept compensation from any client. An attorney may accept unsolicited non-monetary gifts with a value under \$75.

**F. DEFENSE SERVICES TO BE PROVIDED**

1. Representation of persons charged with crimes in the Snohomish County Superior Court;
2. Representation of persons charged with misdemeanors and gross misdemeanors in the Snohomish County District Court;
3. Representation of persons charged with felonies or being held on probable cause in the Snohomish County District Court;
4. Representation of persons filing a writ to the Snohomish County Superior Court from a Snohomish County District Court charge;
5. Representation of persons appearing in District and Superior Court therapeutic courts;
6. Representation of persons appearing in post-conviction hearings in District and Superior Court, including, but not limited to, probation violation hearings, Department of Corrections violation hearings, First Time Felony Offender Review Hearings, Drug Offender Sentencing Alternative (DOSA), Special Sex Offender Sentencing Alternative (SSOSA), or Mental Health Offender Sentencing Alternative (MHOSA) review hearings, hearings on cases remanded by the Court of Appeals, post-conviction hearings brought pursuant to CrR 7.8 or 8.3, and RALJ appeals.
7. Representation of juveniles appearing before Juvenile Court for determination of probable cause, pursuant to JuCR 7.3;
8. Representation of juveniles charged with offenses in the Juvenile Court;
9. Representation of juveniles at show cause hearings in the Juvenile Court for modification of disposition orders pursuant to the provisions of JuCR 7.14;

10. Representation of juveniles appearing juvenile show cause calendars
11. Representation of juveniles at At-Risk-Youth (ARY), Child in Need of Services (CHINS) and Truancy proceedings;
12. Representation of persons against whom petitions are filed for civil commitment, pursuant to RCW Chapter 71.05;
13. Representation of persons against whom petitions are filed for civil contempt proceedings by the State where incarceration is a possibility.
14. Representation of persons against whom petitions are filed for civil contempt proceedings by a private party where incarceration is a possibility.
15. Provision of investigative services to aid in the preparation of the defense of clients of the Association;
16. Provision of information and legal counseling to juveniles related to Diversion, as requested by the Snohomish County Juvenile Court probation department;
17. Provision of information and legal counseling on a 24 hour basis to persons who have contacted the Association regarding specific criminal matters occurring in the County;
18. Appearance at the daily in-custody Superior Court video calendar and representation, solely for the purposes of that proceeding, of all persons appearing on the calendar who are not otherwise represented by counsel, absent a conflict by the Association;
19. Appearance at the daily morning and afternoon in-custody District Court Video Calendars and representation of persons appearing in matters before the Court, absent a conflict by the Association;
20. Appearance at out-of-custody arraignments in the four divisions of the Snohomish District Court to advise persons appearing without counsel; and
21. Provision of such other services as are assigned by the Office of Public Defense which are outside of the duties involved in a case. Such services may include, but are not limited to, representation of material witnesses and representation of persons reappearing before the trial courts for re-sentencing by an appellate court.
22. Providing representation in the above sections requiring the work of paralegals, legal assistants, investigators, social workers, mitigation specialists, and other administrative staff necessary to run a law firm in compliance with the WSBA Indigent Defense Standards.
23. When appropriate, retaining experts, subject to approval outlined in CrR 3.1, JuR 9.2, and CrRLJ 3.1, local rules, and any policy adopted by the Administrator. This contract does



not include funding for expert services, but funding is available through the Office of Public Defense consistent with published policy.

**G. CASE CREDITS; DEFINITION OF CASE; DURATION OF CASE**

A. A case is a referral from the County to the Association. A case will generally meet one of the following categories:

1. A case is one or more criminal charges filed in a single information and resolved with no more than one trial or plea constitute one case. Charges filed against a defendant in separate informations will constitute separate case credits.
2. Felony or misdemeanor counts severed at or before trial constitute separate felony or misdemeanor case credits.
3. Felony and misdemeanor cases reset for trial after a hung jury or other mistrial constitute another case credit.
4. A new trial or sentencing ordered by the trial or appellate court for a felony or misdemeanor case constitutes a separate case credit.
5. Felony and misdemeanor cases commence upon formal referral of a client to the Association by the Administrator, or upon a direct appointment by a Judge.
6. Except as provided in G14 (below) of this Schedule, a criminal case is concluded when all charges are dismissed by the prosecuting attorney, the case is dismissed by the court, the client is acquitted on all charges or the client is sentenced after conviction.
7. A referral for pre-charging representation shall count as a case credit. If the pre-charged case is filed as a criminal charge within 6 months of the assignment, the charged case shall not be assigned as an additional case credit. If the pre-charged case is filed as a criminal charge after 6 months of the pre-charging assignment of the case, the charged case shall count as a case credit in addition to the pre-charging case credit.
8. A post-conviction hearing ordered by the Superior Court at the time of sentencing, to be heard within six months, is considered part of the same felony case and will not constitute an additional case credit.
9. Superior Court post-conviction hearings, not specifically set at the time of sentencing or held more than six months after entry of the judgment and sentence, are not considered part of the same felony case and shall constitute .3 case credits, unless the case is a post-conviction review of a life sentence imposed on a former youth where the case shall count as one credit.
10. A felony case which was closed because the court had issued a bench warrant for the defendant and had struck further court dates will be part of the same case when the warrant is quashed or served and new court dates are set unless the bench warrant is

resolved more than six months after it was ordered. If the defendant returns from a bench warrant six months after the warrant was issued, the case shall count as an additional case credit.

11. A misdemeanor case referred to the Association by the Administrator for the first time subsequent to the conviction of the defendant for purposes of a sentencing hearing or for post-sentence review is considered a misdemeanor and shall count as one half of a misdemeanor case credit regardless of the amount of work performed.
12. One civil contempt case filed by the State shall count as one case credit. A civil contempt case filed by a private party shall count as one case so long as it does not last beyond three court hearings. A civil contempt case initiated by a private party which lasts longer than three hearings shall be considered an additional case credit.
13. Representation of material witnesses shall be considered a case.
14. Each petition filed pursuant to RCW 71.05 shall be considered a case credit.
15. Representation of a client in At Risk Youth (ARY) and/or Child in Need of Services (CHINS) petition filed by the State shall be considered a case.
16. Limitations on Felony Case Credits.
  - a. A felony case which is dismissed upon the motion of the prosecuting attorney before any legal services have been provided to the defendant will not count as a felony case credit.
  - b. A felony case in which the defendant hires private counsel, or which is determined to be a conflict of interest, before the Association has performed 2 hours of non-administrative work will not count as a felony case credit.
21. Limitations on Misdemeanor Case Credits.
  - a. A misdemeanor case that is dismissed upon the motion of the prosecuting attorney before any legal services have been provided to the defendant will not count as a misdemeanor case credit.
  - b. A misdemeanor case in which the defendant hires private counsel, or which is determined to be a conflict of interest, before the Association has performed 1 hour of non-administrative work will not count as a misdemeanor case credit.
  - c. If the Association has performed more than one hour and up to 2 hours of non-administrative work when the defendant hires private counsel or the case is determined to be a conflict of interest, the case will be counted as half of a misdemeanor case credit.
22. Upon termination of a case, representation by the Association shall cease.

- B. The definition of a case under this Contract is distinct from the definition of the case used by the Association for the purposes of determining individual lawyer's annual caseloads. The Association and its lawyers will comply with the WSBA Indigent Defense Standards definition of a case and its relative weight for caseload purposes. Where the WSBA Indigent Defense standards are silent, the Association shall work with the County to define the value of the workload.
  
- C. The Association will administer the referrals by assigning cases to a Staff Attorney. The Association will track the attorney's caseload to ensure it is consistent with Indigent Defense Standard Three. If a referral cannot be accepted due to caseload capacity, the Association will inform the Administrator.

## Schedule B

### RECORDS AND REPORTS

#### **A. RECORDS**

1. Establishment and Maintenance of Records: Records of all matters covered by this Contract shall be maintained by the Association in accordance with requirements prescribed by the County and the Administrator. Except as otherwise authorized by the Administrator, such records shall be maintained for a period of not fewer than five years after closure of each case or not fewer than five years after receipt of final payment pursuant to this Contract, whichever is later.
2. Documentation of Costs: All costs of the Association shall be supported by properly executed payroll, time records, invoices, contracts, and/or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, drafts, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible to the County and the Administrator.
3. Internal Control: The Association shall establish a system of internal control, which will conform to the general principles of accounting. Internal control comprises the plan or organization and the coordinate methods and measures adopted by an organization to safeguard its assets, check the adequacy and the reliability of its accounting data and to promote operating efficiency.

#### **B. ATTORNEY TIME RECORDS**

Each Association attorney performing services under this Contract shall maintain records of all hours and increments of hours spent on each individual case and the nature of the work completed during the documented time. The Association shall administer case weighting consistent with the WSBA Indigent Defense Standards Case Types. The nature of the work recorded by Association employees shall be fall into one of the following categories: Client Communication and Care; Discovery and Investigation; Experts; Legal Research, Motions Practice, and Other Writing; Negotiations; Court Preparation; Court Time; Sentencing and Mitigation and Post-adjudication. Records shall be updated and completed and the case closed within 30 days of the judgment and sentence, acquittal, dismissal, or conclusion of representation.

#### **C. REPORTS AND INFORMATION**

The Association shall, within ten days of the close of each month, submit a monthly statement to the Administrator for payment of its expenses for the previous month. In the County's discretion, the County may pay the Association in advance for services rendered, in which case such monthly statement shall be submitted by Association at the close of each month and County shall confirm the Association's completion of services

paid in advance under this Agreement. The statement will include the following Expenses:

- a. Administrative Expenses;
  - b. Legal Supervisors;
  - c. IT Staff Specialist;
  - d. Administrative Expenses for Fund 124;
  - e. Initial Felony Expenses, ;
  - f. Initial Misdemeanor Lawyer Expenses;
  - g. Fund 124 Felony Lawyer Expenses;
  - h. Calendar Lawyer Expenses;
  - i. Civil Commitment Lawyer Expenses;
  - j. Adult Drug Court Lawyer Expenses;
  - k. Mental Health Court Lawyer Expenses;
  - l. Juvenile Offender Lawyer Expenses;
  - m. Juvenile Show Cause Offender Lawyer Expenses;
  - n. At Risk Youth (ARY), Child in Need of Services (CHINS) and Truancy lawyer expenses;
  - o. Civil Contempt Laywer Expenses;
  - p. Post-Conviction Lawyer Expenses;
  - q. Investigator Expenses;
  - r. Social Worker Expenses;
  - s. General Fund Overhead Expenses.
  - t. Fund 124 Overhead Expenses;
  - u. Other Legal Expenses.
2. The statement shall also include a report setting forth the number of felony, misdemeanor, juvenile, and civil contempt court cases assigned and closed during that month and any adjustments, to those numbers.
  3. Within ten calendar days, the Administrator shall approve or require revision of the report and shall upon approval of same, submit a voucher to the County for payment to the Association once per month.
  4. At such times and in such forms as the Administrator may require, the Association shall furnish any and all statements, records, reports, data and information which the County may require pertaining to matters covered by this Contract.