

OFFICE OF THE COUNTY PERFORMANCE AUDITOR

PERFORMANCE AUDIT OF THE OFFICE OF PUBLIC DEFENSE

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PROJECT SCOPE & OBJECTIVES

- On November 15, 2021, the Snohomish County Council passed Motion No. 21-412 directing Council staff to issue a notice to proceed to the Office of the County Performance Auditor to complete a performance audit of the Office of Public Defense (Audit Topic A.1 in the 2022 Audit Plan, Motion No. 22-046).
- The objective of this audit was to determine the efficiency and effectiveness of the Office of Public Defense (OPD), including the sufficiency of staffing to support key functions and responsibilities and the adequacy of OPD's oversight of contracted services.
- The scope of this audit included an evaluation of existing practices, including a review of activities between Calendar Years 2018-2021.

AUDIT METHODOLOGY

To meet this objective, we performed the following procedures:

- Reviewed relevant laws and guidance governing County public defense operations, including the Revised Code of Washington, Snohomish County Code, and the Washington State Bar Association Standards for Indigent Defense.
- Interviewed personnel regarding business operations, key services, information systems, and the structure of the contractual arrangements between OPD and its attorneys (SCPDA and the Conflict Panel).
- Reviewed and analyzed OPD contracts for assigned counsel, including service level and compensation provisions.
- Analyzed relevant performance data, including expenditure reports and workload indicators, and evaluated compliance with caseload standards.

This audit was conducted in accordance with generally accepted government auditing standards.

BACKGROUND

- The Office of Public Defense (OPD) administers the County's assigned counsel program, providing legal defense services for indigent persons in both criminal and civil cases.
- **OPD Personnel** manage attorney contracts, assign cases to contracted attorneys, review and pay attorney invoices, and manage the indigent screening process.
- OPD assigns most indigent defendants to the **SCPDA** for defense counsel; SCPDA is a private, non-profit law office that provides defense services to persons facing a loss of liberty under criminal and civil laws.
- OPD maintains agreements with a pool of independent private attorneys or law offices—a **Conflict Panel**—that enable OPD to assign cases to a variety of attorneys in the event SCPDA has a conflict or is at capacity.

OBSERVATIONS AND CONCLUSIONS

- This audit revealed three key findings:
 - **Issue #1:** While OPD's budget increased 42 percent between 2017 and 2021, from \$10.5 million to \$14.9 million, data reveal fewer cases were worked.
 - **Issue #2:** During this period, cases assigned to and accepted by the SCPDA often exceeded County-adopted indigent defense standards, which place a cap on the number of cases attorneys should take on in order to provide effective representation.
 - While case-to-attorney ratios were mostly compliant in 2020 and 2021, primarily due to increases in FTE resources and pandemic-caused reductions in case filings, some areas remained non-compliant.
 - **Issue #3:** OPD's contracts with third-party attorneys did not exhibit necessary cost controls.

OBSERVATIONS AND CONCLUSIONS

ISSUE #1

- While OPD's budget increased 42 percent between 2017 and 2021, from \$10.5 million to \$14.9 million, data reveal fewer cases were worked.

Exhibit 1: Office of Public Defense Annual Budget Allocations (2017-2021)

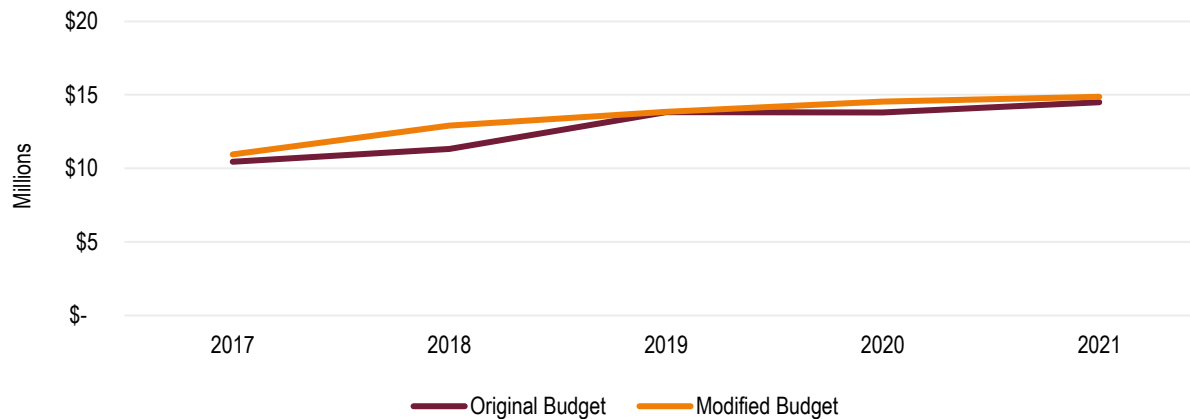


Exhibit 2: OPD Expenditure Trends for Third-Party Attorneys (2017-2021)

	2017	2018	2019	2020	2021	% Change
SCPDA	\$8,187,707	\$9,894,571	\$10,332,668	\$11,112,584	\$11,866,325	45%
Conflict Panel	\$894,434	\$1,076,277	\$1,163,322	\$1,172,136	\$1,022,397	14%

OBSERVATIONS AND CONCLUSIONS

ISSUE #1 (CONT'D)

- OPD Assigned, and SCPDA and the Conflict Panel accepted, fewer cases in 2021 than in the past.
 - OPD screened 68 percent fewer defendants in 2021 (1,643) than it did in 2019 (5,143);
 - OPD referred 44 percent fewer cases to the conflict panel in 2021 (279) than it did in 2018 (502);
 - OPD referred 44 percent fewer felony and misdemeanor cases to SCPDA in 2021 (3,750) than it did in 2017 (6,713).
- Given the increase in funding during this period, such trends often signal declines in operational efficiency.
- However, past budget increases represent significant efforts to right-size the County's public defense program.
 - Current caseload reductions, which stem primarily from the pandemic, have resulted in case-to-attorney ratios that were mostly in line with County-adopted Indigent Defense Standards in 2000 and 2021.

OBSERVATIONS AND CONCLUSIONS

ISSUE #2

- **SCPDA Caseloads Have Not Historically Complied with County-Adopted Caseload Standards**
 - Standards establish a cap of **150 felonies** per attorney, but data show a ratio as high as 240 felonies per attorney in 2017. OPD nearly achieved compliance pre-pandemic with a ratio of 165 felonies per attorney in 2019, and achieved a ratio of 87 felonies per attorney in 2021.
 - Standards establish a cap of **300 misdemeanors** per attorney, but data show a ratio as high as 312 cases per attorney in 2017. OPD achieved compliance pre-pandemic with a ratio of 249 misdemeanors per attorney in 2018 and maintained compliance since.
 - Standards establish a cap of **250 civil commitments** per attorney, but data show a ratio as high as 488 cases per attorney in 2018; OPD nearly achieved compliance in 2021 with a ratio of 260 cases per attorney.

OBSERVATIONS AND CONCLUSIONS

ISSUE #2 (CONT'D)

- Similarly, supervisory and investigative resources dedicated to public defense cases were not always consistent with the standards.
 - The standards require agencies to provide one full-time **supervisor** for every 10 staff lawyers, a ratio of 1:10. As of 2021, OPD funded 48.5 attorneys and 2.75 supervisors, a ratio of nearly 1:18.
 - The standards require agencies to provide one full-time **investigator** for every four staff lawyers, a ratio of 1:4. As of 2021, OPD funded 48.5 attorneys and 7.5 investigators, a ratio of nearly 1:6.5.
 - At the same time, data show that SCPDA's use of investigative resources declined by 50 percent since 2019, suggesting the need to monitor trends more closely before determining whether additional investigative resources are in fact needed.

OBSERVATIONS AND CONCLUSIONS

ISSUE #3

- Enhancing Cost Controls for Third-Party Attorneys Is Necessary
- OPD's contract with SCPDA did not contemplate a scenario in which SCPDA could not or would not accept a maximum workload referred by OPD
 - While the contract recognizes the thresholds established in the Indigent Defense Standards, it does not identify thresholds above or below which either party could consider workloads to be unacceptable given the compensation provided
- OPD's and SCPDA's methods to count caseloads lack a substantive link to actual workloads
 - OPD did not gather the types of information recognized by the Indigent Defense Standards as necessary to measure attorney workload, such as the number and type of cases, attorney hours, and disposition.
 - OPD lacked sufficient performance data to effectively measure attorney workloads, identify potential inefficiencies, or estimate the potential effect trends in case filings may have on existing or planned resources

OBSERVATIONS AND CONCLUSIONS

ISSUE #3

- Rate structures incorporated in Conflict Panel contracts requires improvement
 - Rates paid to the Conflict Panel are generally lower than those paid by peer counties; OPD generally relied on flat fees to compensate the Conflict Panel.
 - To convince attorneys to take on cases, OPD began to negotiate increased hourly rates. However, OPD did not incorporate cost controls to mitigate overruns.
- OPD's use of the Conflict Panel did not comply with County contracting requirements
 - County Code requires OPD to execute contracts with the third-party attorneys employed through the Conflict Panel and, where total compensation exceeds \$25,000, to obtain the County Council's authorization.
 - OPD employed 45 attorneys through the Conflict Panel between 2017-2021; OPD engaged 22 of the 45 attorneys / firms without an executed contract.
 - Of the 22 attorneys or law offices used by OPD without an executed contract, six were paid amounts that exceeded the \$25,000 threshold in any given year, with annual compensation ranging between \$25,397 and \$186,287.

RECOMMENDATIONS

- Seek authorization from the County Council to modify contract provisions relating to the allocation of FTE resources to ensure consistency with County-adopted indigent defense standards.
- Modify the SCPDA contract to recognize an acceptable caseload that can be assigned, including a range above which resources cannot be expected to effectively provide representation and below which resources can no longer be justified.
- Implement a case-reporting and management information system that enables periodic reviews of caseload, workload, and other trends related to the performance of the County's public defense program.
- Ensure formal contracts, with appropriate cost controls, are executed between OPD and conflict panel attorneys immediately upon assignment of cases.

FEEDBACK FROM PERFORMANCE AUDIT ADVISORY COMMITTEE

- The Performance Audit Committee (PAC) convened on August 22, 2022, to discuss this performance audit. This included:
 - The procedures employed throughout this audit engagement.
 - Recognition of the impact of the pandemic on workload trends.
 - The need for caseload and workload data to be captured by OPD.
 - The conclusion of the 2022 work plan and the upcoming development of the 2023 Audit Plan.

Office of the County Performance Auditor

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