

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners

FROM: Carolyn Gallaway, Clerk of the Board

DATE: December 12, 2022

SUBJECT: AGREEMENT No. ICA23016 re: Improving the Quality of Public Defense Services; In the Amount of \$32,375; Jefferson County Administrator; Washington State Office of Public Defense

STATEMENT OF ISSUE:

Each year Jefferson County applies for Chapter 10.101 RCW Public Defense Funding from the Washington State Office of Public Defense.

County Administrator Mark McCauley has requested that this agreement be approved for 2023 funding.

FISCAL IMPACT:

The award for is for \$32,375, to be used in 2023.

RECOMMENDATION:

Approve AGREEMENT NO. ICA23016 with the Washington State Office of Public Defense.

REVIEWED BY:


Mark McCauley, County Administrator

12/8/22
Date

FACE SHEET

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE

1. Recipient –RCW 10.101.070 Funds Jefferson County PO Box 1220 Port Townsend, WA 98368	2. Recipient Representative Mark McCauley County Administrator Jefferson County PO Box 1220 Port Townsend, WA 98368
3. Office of Public Defense (OPD) 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957	4. OPD Representative Leanne Stogsdill Managing Attorney WA State Office of Public Defense 711 Capitol Way South, Suite 106 PO Box 40957 Olympia, WA 98504-0957
5. Distribution Amount \$32,375.00	6. Use Period January 1, 2023 through December 31, 2023
7. Purpose Chapter 10.101 RCW county distributions are statutory formula distributions for the purpose of improving the quality of public defense services in Washington State counties.	
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 January 1, 2023 and end December 31, 2023. 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.	
FOR THE RECIPIENT Name, Title Date	FOR OPD Larry Jefferson, Director Date

Approved as to form only:



December 8, 2022

Philip C. Hunsucker, Date
 Chief Civil Deputy Prosecuting Attorney

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 the Recipient and their contact information are identified on the Face Sheet of this Agreement.

2. DISTRIBUTION AMOUNT

The Distribution Amount is thirty-two thousand three hundred seventy-five dollars and 00/100 Dollars (\$32,375.00) to be used for the purpose(s) described in the USE OF FUNDS below.

3. PROHIBITED USE OF FUNDS (as adopted in OPD Policy County/City Use of State Public Defense Funding)

- a. Funds cannot be used to supplant local funds that were being spent on public defense prior to the initial disbursement of RCW 10.101.070 funds.
- b. Funds cannot be spent on purely administrative functions or billing costs.
- c. Funds cannot be used for indigency screening costs.
- d. Funds cannot be used for technology systems or administrative equipment intended for county administrative staff, court staff or judicial officers.
- e. Funds cannot be used for county attorney time, including advice on public defense contracting.

4. USE OF FUNDS

- a. Recipient agrees to use the RCW 10.101.070 funds to improve the quality of legal representation directly received by indigent defendants. (See Chapter 10.101 RCW and OPD Policy County/City Use of State Public Defense Funding for guidelines regarding permitted uses of state public defense funds.)
- b. Recipient agrees to use the funds for the following purpose(s):
 - i. Adding attorneys to reduce public defense caseloads;
 - ii. Adding investigator services;
 - iii. Adding expert services.
- c. Recipient agrees to use the funds in calendar year 2023. If Recipient is unable to use the funds in 2023, the Recipient agrees to notify OPD to determine what action needs to be taken.
- d. Recipient agrees to deposit the RCW 10.101.070 funds check within 14 days of receipt.

5. OVERSIGHT

Over the duration of the grant term, OPD may conduct site visits for purposes of addressing improvements to public defense and ensuring the use of grant funds for their specified purposes. At OPD's request, Grantee will assist in scheduling such site visits and inviting appropriate attendees such as, but not limited to: public defense attorneys, judicial officers, and county representatives.

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.**

The 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 the 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, the 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, the 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**

The 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, the Recipient shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the 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 the 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**

The 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 the 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. The 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. **SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, OPD may terminate this Contract. OPD shall in good faith provide as much notice as possible of such termination.

17. **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.

WASHINGTON STATE OFFICE OF PUBLIC DEFENSE COUNTY/CITY USE OF STATE PUBLIC DEFENSE FUNDING

State funds disbursed to counties and cities pursuant to Chapter 10.101 RCW cannot be used to supplant local funds that were being spent on public defense services prior to the initial disbursement of state funds. State funds must be spent to improve the quality of legal representation directly received by indigent defendants. Following are guidelines regarding permitted use of state public defense funds.

1. State public defense funding under Chapter 10.101 RCW *may* be used in the following ways:

- a) Additional investigator services
- b) Additional expert services
- c) Establishing a public defense agency within the local government structure
- d) Professional evaluation of attorney performance by a public defense expert
- e) An attorney coordinator to provide oversight for local public defense services such as, but not limited to, contract management, review of attorney case/time reports, handling client complaints, approving invoices for non-attorney services and coordinating with other local government offices
- f) Increase in public defense attorney compensation
- g) Provision of public defense services at first appearance calendars (or increase of first appearance services if public defenders are already provided)
- h) Addition of more attorneys to lower public defense caseloads
- i) Addition of social worker services to assist public defense attorneys
- j) Direct training costs to train public defense attorneys
- k) Evaluations of defendants for sentencing options, such as drug evaluations, SSOSA, DOSA
- l) Provision of interpreter services for attorney-client interviews and communication (but in-court interpreter appointments required under Chapter 2.43 RCW are not an approved use of funds)
- m) Equipment or services to ensure safe, continuity of representation due to COVID-19 or other officially declared emergencies or disasters. Examples include personal protective equipment for defense attorneys and clients (masks, gloves, face shields, etc.) and technology for attorneys to communicate remotely with clients and participate in remote or in-person court proceedings (subscriptions for video conferencing services, devices to facilitate confidential attorney-client conversations in court, etc.).
- n) Subject to approval by OPD, applicants may request funds for other uses that improve public defense services and are supported by the WSBA Standards for Indigent Defense Services.

2. State public defense funding under Chapter 10.101 RCW *may not* be used in the following ways:

- a) Supplanting county or city funds used for public defense services prior to the initial disbursement of state funds to the county or city
- b) Billing or other administrative costs incurred by the county or city in administering the public defense program
- c) Indigency screening
- d) County, city or court technology systems or administrative equipment not exclusively used for public defense services
- e) County or city attorney time, including advice on public defense contracting, except as provided in Section 1(d) above.

**OPD PUBLIC DEFENSE IMPROVEMENT PROGRAM
TRAINING REQUIREMENTS
(as amended May 2016)**

Jurisdictions that apply for public defense funds shall require that all attorneys providing services annually attend at least 7 hours of trainings approved by the Washington State Office of Public Defense (OPD).

An approved training is a program or course of education in criminal defense offering instruction that improves an individual's substantive legal knowledge in the areas of criminal law, criminal procedure ethical knowledge or trial skills. Such training may include areas of civil practice in which an attorney provides public defense services such as dependency, civil contempt or civil commitment matters.

PROCEDURE

The CLE programs that OPD, the Washington Defender Association (WDA) and the Washington Association of Criminal Defense Lawyers (WACDL) offer shall be considered "approved trainings." In addition, courses approved by the Washington State Bar Association shall be considered "approved training" if the programs are related to criminal defense and are sponsored or presented by the following organizations:

Washington State Bar Association Continuing Legal Education Department;
University of Washington School of Law; Seattle University School of Law;
Gonzaga University School of Law; King County Department of Public Defense,
the National Association of Criminal Defense Lawyers, or the National
Association of Public Defenders.

An attorney who has attended a course or program other than one of those listed above shall apply to OPD for approval before the program or by the end of the calendar year in which the course or program is held. OPD shall approve the CLE if taught by professionals knowledgeable in the applicable subject area and if the course will improve an attorney's substantive legal knowledge, ethical knowledge or trial skills. Approval shall be at the discretion of the OPD director. Appeals of denials of approval may be made to the OPD Advisory Committee.

COMMENTARY

This policy comports with RCW 10.101.050, which requires that "attorneys providing public defense services attend training approved by the Office of Public Defense at least once per calendar year." It is also consistent with the Public Defense Standards endorsed by the Washington State Bar Association, (Standard Nine: Training), which requires that attorneys providing public defense services should participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice."



**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**
Larry Jefferson, Director

Email: opd@opd.wa.gov

(360) 586-3164
FAX (360) 586-8165

Mark McCauley
County Administrator
Jefferson County
PO Box 1220
Port Townsend, WA 98368

Re: Chapter 10.101 RCW Application for Public Defense Grant Funds

Dear Mark McCauley:

The Washington State Office of Public Defense (OPD) is pleased to announce the award of RCW 10.101.070 Public Defense Grant funds to Jefferson County. The award is in the amount of \$32,375.00 for use in calendar year 2023.

Enclosed is a short Interagency Agreement for your review and signature by an authorized representative of Jefferson County. The signed Interagency Agreement should be returned by email or postal mail to OPD. A conformed copy will be sent to you for your records. A copy of OPD's policy on authorized uses is enclosed.

The funds will be provided by paper check and mailed to you in January 2023 or upon receipt of the completed agreement. The check will be issued to the entity corresponding to the Statewide Vendor Number that you provided in your application earlier this year: **SWV0002430-28**. If you want the check issued under a different Statewide Vendor Number, or if you want the check mailed to a different person or office, please let us know. If Jefferson County uses state BARS coding, these grant funds should be received under BARS revenue code 336.01.28.

Chapter 10.101 RCW requires counties awarded funds to demonstrate that they are either meeting the public defense standards referenced in RCW 10.101.030, or that the funds received are used to make appreciable demonstrable improvements in the delivery of public defense services.

We look forward to working with you and hope to visit your program during the year. If you have any questions, please feel free to contact Leanne Stogsdill at (360) 586-3164 ext. 154 or Leanne.Stogsdill@opd.wa.gov.

Sincerely,

Larry Jefferson, Director

Enclosures

Justice ♦ Service ♦ Equity ♦ Excellence

OPD PUBLIC DEFENSE IMPROVEMENT PROGRAM – CONTRACT ATTORNEY TIME REPORTING REQUIREMENT

All attorneys providing public defense services under contract to a county or city, must make an annual report to the contracting jurisdiction on the extent of their private caseload, if any.

As used in RCW 10.101.050, non-public defense cases are an attorney's private cases worked on during the previous year.

Attorney reports are required to provide the following information annually:

- (1) The number and type of cases in their private practice. (i.e. cases handled outside a defense contract including but not limited to retained cases of any type),
- (2) The number and type of other public defense contracts, if any, and
- (3) The total hours billed for non-public defense cases, if any.

Number and type of non-public defense cases handled: Case types may be indicated by general category, e.g. family law, retained criminal case or personal injury. The number of cases for each type should be reported.

Total hours billed for non-public defense cases: Attorneys who bill for some or all of their non-public defense representation on an hourly basis must report the total number of personal hours billed. Attorneys who accept retained cases on a flat fee basis (cases in which a negotiated fee is charged for the entire case) or on a contingency fee basis should indicate the fee types when reporting their cases.

COMMENTARY

Non-public defense case reporting by contract public defense attorneys is mandated under RCW 10.101.050. These reports permit a contract attorney's actual caseload to be monitored and assist in determining appropriate compensation levels for public defense services.

Attorneys are not required to provide client or case names or other identifying information, case fee amounts or hourly billing rates.

This reporting requirement does not apply to attorneys who accept only periodic court appointments to public defense cases.

The jurisdiction must forward caseload reports when applying for public defense improvement funds. OPD will ask contracting jurisdictions to report contract attorneys' case type reports as part of the jurisdiction's case statistics information on the annual RCW 10.101 application.