

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 96766-1

SUPREME COURT OF THE STATE OF WASHINGTON

COLLEEN DAVISON, legal guardian for K.B., a minor, on behalf of
themselves and others similarly situated, and GARY MURRELL,

Respondents,

v.

STATE OF WASHINGTON and WASHINGTON STATE OFFICE OF
PUBLIC DEFENSE,

Petitioners.

PETITIONERS' MOTION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

This proceeding raises a novel question concerning the role of the State of Washington and the Office of Public Defense (OPD, or collectively the State) if a county fails in its legal obligation to provide constitutionally adequate indigent defense to juveniles charged with offenses. Longstanding state law requires counties to provide indigent juvenile defense services in cases that the counties prosecute. It follows that if a county fails to provide constitutionally adequate defense services the burden of remedying that insufficiency rests with the county, as the entity legally obligated to provide that service. The State bears no duty to act unless the statutory assignment of the duty to a county to provide indigent juvenile defense fails to provide the county with the means to meet this obligation. The trial court ruled that the State has a duty to act—although neither Plaintiffs nor the trial court have attempted to define the duty—if it knows of a county’s systemic failure to provide constitutionally adequate indigent juvenile defense, without regard to whether the county could more appropriately remedy the problem itself.

The parties have stipulated, and the superior court has certified, that the order presented for review involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate

termination of the litigation. Order (Dec. 14, 2018) (attached as App. A); Report of Proceedings (attached as App. B). Therefore, the parties agree that review under RAP 2.3(b)(4) is warranted.

II. STATEMENT OF THE CASE¹

A. Factual and Procedural Background

Colleen Davison, as guardian for K.B., and Gary Murrell (collectively Davison) filed this action alleging that Grays Harbor County systemically fails to provide constitutionally adequate indigent juvenile defense. Grays Harbor County provides those services, not the State. State law treats public defense in the same way that it treats other components of the criminal justice system: as local functions. Just as local police, sheriffs, prosecutors, and even trial courts are operated locally, so too is public defense. Nonetheless, Davison brought this action against only the State; Grays Harbor County was not named as a party.

Davison asked the Thurston County Superior Court to declare that the State and OPD have a duty to act when they become aware of a systemic failure by a county to provide constitutionally adequate indigent juvenile defense. Davison alleged that Grays Harbor County systemically fails to provide constitutionally adequate indigent juvenile defense services. First

¹ The Statement of the Case in this Motion for Discretionary Review and in the Statement of Grounds for Direct Review are the same.

Am. Class Action Compl. for Declaratory Relief (Am. Compl.) ¶¶ 29-45 (attached as App. C); *see also id.* ¶¶ 55-105. Davison contends that, even if the county is statutorily responsible for providing indigent juvenile defense services, the State is “responsible for ensuring that public defense systems in Washington State provide constitutionally adequate representation to indigent criminal defendants[.]” *Id.* at Relief Requested ¶ C. Davison alleges that the State is required to act when it knows of a county’s systemic failure to provide constitutionally adequate defense, even though that function is assigned to the counties. *Id.* ¶¶ 119-24. The trial court certified a plaintiff class comprising “[a]ll indigent persons who have or will have juvenile offender cases pending in pretrial status in Grays Harbor County Juvenile Court since April 3, 2017, and who have the constitutional right to appointment of counsel.” Stipulation and Order Certifying Class at 2 (Nov. 9, 2017) (attached as App. D).

The parties filed cross motions for summary judgment, following limited discovery regarding indigent juvenile defense services provided by Grays Harbor County.² The State asked the trial court to dismiss because the responsibility for providing indigent juvenile defense rests with the counties and not with the State. Both parties agreed that Grays Harbor

² The parties anticipate further discovery following remand.

County has the means to satisfy constitutional obligations. Davison nonetheless asked for summary judgment against the State without including Grays Harbor County in the litigation, solely on the theory that the State is independently obligated to act.

In a narrowly focused ruling, the trial court denied the State's motion for summary judgment and held Davison's cross motion in abeyance. App. A at 3. The court first noted its conclusion that juvenile defense is a county function. RP 3:25-4:2 (transcript of summary judgment hearing attached to Notice for Discretionary Review). The court then clarified that it would not resolve the case on summary judgment, reserving the question of the sufficiency of indigent juvenile defense in Grays Harbor County for a later date. RP 4: 9-5:1. The court identified the sole issue on which it sought oral argument, and on which it ultimately ruled:

[W]hether or not under any set of facts or circumstances in Washington State a lawsuit of this nature may be permitted, that is one for alleged systemic and significant violations of the right to counsel in juvenile defense may be brought against the state only without also suing or instead suing the county.

RP 5:3-8.

The dispute at the summary judgment hearing accordingly narrowed to an inquiry as to whether (1) the duty to remedy any systemic deficiency in indigent juvenile defense rests with the county obligated to provide that

defense, and a duty for the State to act arises only if the county lacks the means to provide constitutionally adequate indigent juvenile defense (the State's position), or (2) the State has a duty to act whenever it knows of a systemic failure by a county to provide constitutionally adequate indigent juvenile defense without regard to the county's capacity to remedy its own deficiency (Davison's position). The questions of whether services provided by Grays Harbor County are systemically inadequate, and whether that determination can even be made without joining Grays Harbor County as a party, were not decided by the trial court and are not presented for discretionary review.

The trial court concluded that the State has a duty to act even in the absence of proof that the county cannot act. "I believe that the standard that should apply in this type of case is a knowing systemic violation and that the type of relief that is -- has been requested by the plaintiffs in this case would be appropriate if the facts bore it out." RP 28:13-17.

In order to facilitate a determination by a higher court, the trial court certified that this case "involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order [denying the State's motion for summary judgment] may materially advance the ultimate termination of the litigation." App. A at 3. The trial court denied the State's motion for summary judgment without

determining whether Grays Harbor County does, or does not, systemically fail to provide constitutionally adequate indigent juvenile defense. RP 29:5-30:6.

B. Legal Background

Public defense has been statutorily committed to Washington's counties for well over a century. Laws of 1909, ch. 249, § 53 (requiring that appointed counsel for indigents be paid "by the county in which such proceeding is had").³ Today, a combination of statutes and court rules, read together, requires counties to provide indigent juvenile defense. RCW 36.26.020; RCW 10.101.020; .030; CrR 3.1(d). The Legislature decided early on that public defense, like other roles in the criminal justice system including police, prosecutors, and courts, should be performed locally. Laws of 1969, ch. 94 (original enactment of statutes now codified in RCW 36.26). The legislative decision to provide public defense services through the same local governments that investigate and prosecute most

³ In 1984, the Legislature repealed this 1909 statute, by then codified as RCW 10.01.110, as part of a bill repealing statutes that had been superseded by court rule. Laws of 1984, ch 76 § 20. Since then, both courts and the Legislature have interpreted the law to require the counties to provide indigent juvenile defense at county expense. *See In re Welfare of J.D.*, 112 Wn.2d 164, 170, 769 P.2d 291 (1989) (holding counties responsible for providing the costs of appointed counsel and guardian ad litem services in juvenile dependency and termination actions, before statutory transition to OPD of responsibility of providing counsel for parents in such actions). This Court has cited RCW 10.101.030 for the proposition that "[e]ach county or city operating a criminal court holds the responsibility of adopting certain standards for the delivery of public defense services, with the most basic right being that counsel shall be provided." *In re Disciplinary Proceeding Against Michels*, 150 Wn.2d 159, 174, 75 P.3d 950 (2003).

crimes and operate the courts that adjudicate them reflects the interrelationship among functions within the criminal justice system. Local police and sheriffs are, of course, officers of cities and counties. The local offices of sheriff, county clerk, and prosecuting attorney are all established in the Washington Constitution as county officers. Const. art. XI, § 5. Providing all of these functions through a single unit of government allows a comprehensive view of the entire system in a county.

State law requires that counties adopt “standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office.” RCW 10.101.030. A county may choose to provide public defense services either on its own, through a local public defense office or by contract, or through multi-jurisdictional public defense districts. RCW 36.26.020. Either way, the county—not the State—fixes the compensation of public defenders and staff, and provides office space, furniture, equipment, and supplies. RCW 36.26.060.

The statutes also provide for supplemental state funding for this local service. OPD administers that function. OPD “shall disburse appropriated funds to counties and cities for the purpose of improving the quality of public defense services.” RCW 10.101.050. State law establishes a system for OPD to distribute specified state funds to cities and counties. RCW 10.101.060 (counties), .080 (cities). “In order to receive funds, each

applying county or city must require that attorneys providing public defense services attend training approved by the [OPD] at least once per calendar year.” RCW 10.101.050. Counties and cities must report expenditures for public defense to OPD, “including per attorney caseloads, and shall provide a copy of each current public defense contract to [OPD] with its application.” RCW 10.101.050. OPD must distribute the state funds according to a statutory formula, with ninety percent of the state-appropriated funds going to counties and ten percent to cities. RCW 10.101.070, .080. State law prohibits OPD from providing direct representation to clients, leaving that a local function. RCW 2.70.020(7).⁴

Other statutes relating to public defense treat indigent juvenile defense as part of the same requirement as providing public defense for adult criminal defendants. RCW 10.101.020 (determination of indigency), .030 (requiring counties to develop standards for delivery of public defense services, “whether those services are provided by contract, assigned

⁴ In addition to grants under RCW 10.101, the State provides additional funds to counties that incur extraordinary criminal justice costs. RCW 43.330.190. “Extraordinary criminal justice costs are defined as those associated with investigation, prosecution, *indigent defense*, jury impanelment, expert witnesses, interpreters, incarceration, and other adjudication costs of aggravated murder cases.” *Id.* (emphasis added). This program avoids placing on counties the exceptional cost burdens caused by unusually complex and expensive matters. More importantly, the Legislature, through RCW 43.330.190, ensures that counties’ funding of indigent defense services will not be overburdened in extraordinary circumstances

counsel, or a public defender office”), .050 (providing supplemental state funding for improvement of public defense “for both juveniles and adults”).

State law thus establishes public defense as a local function supplemented and reinforced with state funds.

III. MOTION FOR DISCRETIONARY REVIEW

A. Moving Parties

The State and OPD respectfully move that this Court grant discretionary review of the orders of the Thurston County Superior Court, including the written order attached as Appendix A and the oral ruling attached as Appendix B.

B. Decision Below

The Thurston County Superior Court ruled that the State has a duty to act with regard to a known systemic failure by a county to provide constitutionally adequate indigent juvenile defense services. App. A; App. B.

C. Issue Presented for Discretionary Review

Petitioners State and OPD seek direct discretionary review in this Court of the following issue:

Does the State of Washington or the Washington State Office of Public Defense have a duty to act when it knows of a systemic failure by a county to provide constitutionally adequate

defense to indigent juveniles charged with offenses in juvenile court if the county has the means of providing constitutionally sufficient services?

D. This Court Should Grant Discretionary Review to Determine a Controlling Question of Law

This Court should grant discretionary review in this case because, as the trial court certified and the parties agree, the order denying the State’s Motion for Summary Judgment “involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.” RAP 2.3(b)(4); App. A.

The trial court certified this matter for interlocutory review because its order addressed a threshold question that will guide the remainder of the proceedings in the trial court. The trial court did not rule on underlying questions of fact or determine whether indigent juvenile defense services provided by Grays Harbor County systemically fail to meet constitutional standards. Rather, the court indicated that resolution of those questions would require a bench trial. “And,” the trial court continued, “I will make the plea that I believe that there is a sufficiently substantial and differing opinion [on a] question of law that it might be very beneficial in this case if a higher court were to look at this threshold question [of the State’s duty],

not only because it might obviate the need for significantly more resources moving forward, but even if a higher court would agree that this should move forward, they might have helpful guidance about what the standard should look like.” RP 29:15-23.

The trial court also explained that it issued its decision in a vacuum of authority. “[T]here is nothing squarely on point in this jurisdiction that answers the question before me today, and thus I am in a position where the standard is in effect what do I believe a higher court of this state would do in these circumstances, and I am doing what I believe a higher court in this state would do in these circumstances based primarily on what appears to be the majority view of other jurisdictions.” RP 28:22-29:4.

The threshold determination of whether, or when, the State has a duty to act when a county is alleged to have systemically failed in its provision of indigent juvenile defense services is therefore both novel and fundamental to the resolution of this case. If the case were to proceed without discretionary review, proceedings in this case potentially would be multiplied. The trial court indicated that absent discretionary review it would proceed to a bench trial. Depending on the way in which the issue presented for review is eventually resolved, that bench trial could turn out to be unnecessary. Alternatively, even if a bench trial becomes necessary, absent an appellate ruling it is possible that the trial court could apply the

wrong legal standard in such a way that a remand for retrial would eventually become necessary.

For these reasons, the State, agreeing with Davison and the trial court, urges this Court to grant discretionary review.

IV. CONCLUSION

This Court should grant discretionary review to determine the circumstances under which a party can seek relief directly against the State for allegations that a separate entity—a county—has systemically failed to provide indigent juvenile defense. The trial court certified this matter as appropriate for interlocutory review, and parties concur that appellate review at this stage could substantially advance this case toward final resolution.

RESPECTFULLY SUBMITTED this 28th day of January 2019.

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CERTIFICATE OF SERVICE

I hereby declare that on this day true copies of the foregoing document were served via electronic mail upon the following parties:

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DATED this 28th day of January 2019, at Olympia, Washington.

s/ Stephanie N. Lindey
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FILED

DEC 14 2018

Superior Court
Linda Myhre Enlow
Thurston County Clerk

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

COLLEEN DAVISON, legal guardian for
K.B., a minor on behalf of themselves and
others similarly situated and GARY
MURRELL,

Plaintiffs,

v.

STATE OF WASHINGTON and
WASHINGTON STATE OFFICE OF
PUBLIC DEFENSE,

Defendants.

NO. 17-2-01968-34

[PROPOSED]
ORDER

THIS MATTER came on for hearing on December 14, 2018. Counsel of record appeared on behalf of the Plaintiff class, and on behalf of Defendants State of Washington and Washington State Office of Public Defense. Before the Court were cross motions for summary judgment from both the Plaintiffs and Defendants. The Court considered the motion, the arguments of counsel, and the following:

1. Defendants' Memorandum in Support of Motion for Summary Judgment;
2. Declaration of Joanne Moore in Support of Defendants' Motion for Summary Judgment;
3. Declaration of Jeffrey T. Even in Support of Defendants' Motion for Summary

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- Judgment;
- 4. Plaintiffs' Opening Brief in Support of Motion for Summary Judgment;
- 5. Declaration of Simmie Ann Baer;
- 6. Declaration of Mathew L. Harrington;
- 7. Defendants' Response to Plaintiffs' Opening Brief in Support of Motion for Summary Judgment;
- 8. Declaration of Jeffrey T. Even in Support of Defendants' Response to Plaintiffs' Opening Brief in Support of Motion for Summary Judgment;
- 9. Plaintiffs' Opposition to Defendants' Motion for Summary Judgment;
- 10. Declaration of Theresa H. Wang;
- 11. Reply in Support of Defendants' Motion for Summary Judgment;
- 12. Reply in Support of Plaintiffs' Motion for Summary Judgment;
- 13. Declaration of Theresa H. Wang in Support of Plaintiffs' Reply in Support of Plaintiffs' Motion for Summary Judgment;
- 14. Order Requesting Supplemental Briefing;
- 15. State's Supplemental Brief in Support of Summary Judgment;
- 16. Plaintiffs' Response to 11/1/18 Order Requesting Supplemental Briefing;
- 17. State's Response to Plaintiffs' Response to November 1, 2018 Order Requesting Supplemental Briefing;
- 18. Plaintiffs' Response to Defendants' Supplemental Brief;
- 19. Declaration of John Midgley in Support of Plaintiffs' Supplemental Briefing;
- 20. Other pleadings, papers, and records on file with this Court in this action; and
- 21. _____

NOW, THEREFORE, having considered the Motions, the arguments of counsel, and the papers, records, and files in this matter, and the Court deeming itself fully advised in the

1 premises, the Court orders as follows:

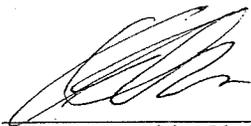
2 1. THE STATE'S MOTION FOR SUMMARY JUDGMENT IS
3 DENIED, AND THE COURT HOLDS THE PLAINTIFF'S
4 MOTION IN ABEYANCE;

5 2. THE COURT CERTIF^{IES}ES THAT ~~THE~~ THIS ORDER INVOLV^{ES}ES
6 A CONTROLLING QUESTION OF LAW AS TO
7 WHICH THERE IS SUBSTANTIAL GROUND FOR
8 A DIFFERENCE OF OPINION AND THAT
9 IMMEDIATE REVIEW OF THE ORDER MAY
10 MATERIALLY ADVANCE THE ULTIMATE ~~TERMINATION~~ TERMINATION
11 OF THE LITIGATION, PURSUANT TO RAP 2.3(b)(4).

12 3. PENDING DATES AND DEADLINES ARE
13 STRICKEN, AND THE COURT WILL SCHEDULE
14 A STATUS CONFERENCE, MARCH 29, 2019
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20

21 DONE IN OPEN COURT this 14th day of December, 2018.

22
23 **CHRISTOPHER LANESE**

24 
25 The Honorable Chris Lanese
26 Judge of the Superior Court

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

COLLEEN DAVISON, et al.,)
)
 Plaintiffs,)
)
 vs.) SUPERIOR COURT NO. 17-2-01968-34
)
STATE OF WASHINGTON and)
WASHINGTON STATE OFFICE OF)
PUBLIC DEFENSE,)
)
 Defendants.)

THE HONORABLE CHRIS LANESE PRESIDING

Summary judgement hearing
Report of proceedings
December 14, 2018
2000 Lakeridge Drive SW
Olympia, Washington

Court Reporter
Ralph H. Beswick, CCR
Certificate No. 2023
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Appendix B

A P P E A R A N C E S

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For the Defendants: Jeffrey Even
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1 THE COURT: Please be seated. Good afternoon,
2 everyone.

3 MR. EVEN: Good afternoon, Your Honor.

4 THE COURT: I understand although it's five minutes
5 early the parties are ready to proceed; is that correct?

6 MR. EVEN: That is correct.

7 MR. MIDGLEY: That's correct.

8 THE COURT: I am as well so let's do appearances for
9 the record.

10 MR. MIDGLEY: John Midgley on behalf of the
11 plaintiffs.

12 MR. HARRINGTON: Matt Harrington on behalf of the
13 plaintiffs.

14 MR. EVEN: Jeffrey Even, deputy solicitor general
15 for the defendants.

16 MR. MENTZER: Eric Mentzer for the defendants also.

17 THE COURT: Good afternoon. So we are here for
18 cross-motions on summary judgment. I will note that I have
19 read all of the submitted materials and the authorities
20 cited therein. I will have some initial comments for you
21 to help guide our oral argument today. Specifically there
22 have been a lot of issues briefed. I essentially want to
23 hear oral argument only about one. So here's what I don't
24 want to hear oral argument about:

25 First is whether or not the State of Washington has

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1 delegated responsibility for juvenile defense to the
2 counties. It is clear to me that the state has done that.
3 That does not resolve the issue, of course, because the
4 question is whether or not that eliminates responsibility
5 for any shortcomings from the state, but I don't want to
6 hear about what the statutory scheme is in Washington State
7 because it's clear to me that that is what Washington State
8 has done.

9 Additionally, should the initial thresholds for allowing
10 this suit to proceed be found to be present, I'm not going
11 to be ultimately addressing this case at this time on its
12 merits in terms of whether or not there is a constitutional
13 violation. I'll articulate why. It is clear that the
14 plaintiffs have articulated that as what their motion is
15 they want substantive judgment on the merits, and they have
16 moved appropriately for that. The state in responding to
17 summary judgment have understandably focussed on what I
18 might refer to as jurisdictional issues, but isn't
19 technically jurisdictional in the absolute sense, but they
20 haven't necessarily met those issues head on for the reason
21 that they believe that this lawsuit for other reasons isn't
22 appropriate in the first place. Given the significance and
23 magnitude of these issues I am not going to be ruling on
24 those underlying merits should they be appropriate to be
25 reached at all without having a full and fair opportunity

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1 for both parties to meet those issues head on.

2 Which means that the one issue that I want to hear oral
3 argument about is whether or not under any set of facts or
4 circumstances in Washington State a lawsuit of this nature
5 may be permitted, that is one for alleged systemic and
6 significant violations of the right to counsel in juvenile
7 defense may be brought against the state only without also
8 suing or instead suing the county. That is the issue of
9 the day that I need to hear oral argument on.

10 I'll note that I appreciate in advance the high quality
11 of the briefing in this case. It is a tricky issue given
12 the relative lack of direct authority at least on this and
13 the differing approaches that different jurisdictions
14 appear to have taken, and so I also appreciate and I've
15 received and reviewed the supplemental briefing that I
16 requested. That too has been helpful.

17 So with that being said, that's what I want to hear
18 about, and I will have questions for both sides, and given
19 that this is properly teed up in my mind as the state's
20 motion to dismiss due to an inability to bring this kind of
21 lawsuit, I would like to hear from the state first.

22 MR. EVEN: Thank you, Your Honor. Jeffrey Even once
23 again for the defendants.

24 THE COURT: Are there any sets of facts or
25 circumstances where this kind of case would be allowed in

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1 your mind given the statutory structure in Washington State?

2 MR. EVEN: I think -- well, yes, it's conceivable,
3 but the circumstances that I would suggest have already
4 been basically eliminated from the scenario by the
5 plaintiffs' admissions.

6 Now, maybe I want to back up a little bit here. It is
7 helpful to have the court tee up what is on the court's
8 mind in the way that you just did. However, that's
9 obviously causing me to re-think a little bit how I want to
10 present. So what I think might be helpful here is to take
11 a look at kind of the nature of the relationship between
12 state government and county government, and it's -- I think
13 the parties may have talked past each other a little bit on
14 this.

15 The relationship between state and county is a little
16 different than the relationship between state and federal
17 because in the federal scheme we have two sovereignties.
18 We have the federal government and we have the state
19 government. With state and local we have one sovereignty,
20 the state, but many state governmental functions are
21 performed through local entities, cities, counties and
22 others. So that does change the nature of the relationship
23 a little bit. Now, that does not mean that there's a
24 hierarchy in which the state -- just kind of generically a
25 state official can give orders to local officials unless

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1 there's some kind of statutory scheme under which that
2 happens. That's not the nature of that relationship.
3 State and local still are two different corporate entities.

4 Now, as the plaintiffs correctly say, cities and
5 counties are political subdivisions of the state, and so to
6 some extent, you know -- so if we have a principle as we do
7 here under *Gideon* that the state is responsible for
8 providing public defense, that can be delegated. And
9 that's fine. It can be delegated to a separate corporate
10 entity, a city or a county, but then unless that delegation
11 itself is what becomes the constitutional issue, then the
12 remedy lies against the county. That's maybe a long
13 preamble to get to that sentence that was my conclusion.

14 THE COURT: What would be required to make the
15 showing that the delegation itself is unconstitutional?
16 Would it be in a vacuum looking at the statutes or is it
17 facts on the ground as applied in the case?

18 MR. EVEN: I think it would have to be facts on the
19 ground, and it's facts that are not on the ground in this
20 case. What I mean by that is the plaintiffs have admitted
21 that Grays Harbor County is capable under the statutory
22 scheme of providing constitutionally sufficient indigent
23 juvenile defense. If that's the case, then no claim arises
24 against the state. The claim would be against the county.
25 There would be nothing there to question the

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1 constitutional of the delegation, which I mean not just
2 the delegation, but also that the state has provided taxing
3 authority for the county and means for providing the
4 service. So given that scenario, there is no cause of
5 action against the state.

6 Now, this takes me back again to thinking about a case
7 that's discussed in the briefing, the *Quitman County* case
8 out of Mississippi in which there the Supreme Court said
9 well, if the county just can't provide this service, and
10 that was the county's position in that case, then the
11 state's going to have an obligation to step in. And then
12 that case was remanded. There was a trial conducted, and
13 the result of the trial was that the county could provide
14 the service.

15 THE COURT: At what point does "unwilling" or
16 "historically has not" become so persistent that it becomes
17 a "can't"?

18 MR. EVEN: I don't think it does. Because there
19 remains a judicial remedy in those kinds of scenarios
20 against the county itself. So if the county persistently
21 refuses -- I don't know that there is an express refusal at
22 issue here, but if the county refused, the county could be
23 ordered by the court to improve the quality of their
24 service. If in turn their response to that was "Well, we
25 can't. It's beyond our means," that would raise a

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1 different kind of issue, but that's where we get into facts
2 on the ground as the court mentioned. So yeah. I think
3 that really is the scenario. We need Grays Harbor here I
4 think, first of all, to evaluate just, you know, a
5 threshold question. Are they or are they not providing
6 constitutionally sufficient service, but then we also need
7 them here for that remedy.

8 Now, I think that's what I have to say that responds to
9 your question unless you have more.

10 THE COURT: I'm thinking. So would an inability to
11 provide constitutionally adequate representation turn
12 solely on the ability to generate sufficient funds to do so?

13 MR. EVEN: Not necessarily. Now, that's what
14 obviously comes first to mind is, you know, does the county
15 have a sufficient tax base to do this and have they
16 exercised the options that were given to them under state
17 law, but it may also relate to other choices on
18 discretionary spending for the county or it may relate to
19 things that aren't spending at all. For example, in this
20 case the state supreme court has adopted standards on
21 public defense, and so, you know, there is a substantive
22 component here too, but there are guidelines provided in
23 the form of those standards that could help not only just
24 understand where we're going to get the money to do this
25 but what is the thing we're supposed to do. The thing

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1 we're supposed to do has been provided through the enacted
2 standards.

3 THE COURT: What authority do you believe best
4 supports your proposed scenario where a lawsuit could move
5 forward?

6 MR. EVEN: I think the best scenario is the *Quitman*
7 case that we discussed. I would also point to -- this
8 would be secondary -- the state supreme court case in *St.*
9 *v. Howard* which is the only example we have of a case in
10 which the state was ordered to pay for public defense, but
11 there's some discussion in there about the fact that public
12 defense is one component of a larger criminal justice
13 system, and so as a city or a county is deciding questions
14 like how many police officers are we going to have, how
15 many prosecutors are we going to have, what kind of law
16 enforcement structure do we need, public defense goes hand
17 in glove with those other components, and so as the *Howard*
18 court noted, it would make very little sense to make one
19 entity subject to -- or responsible for providing one piece
20 of that but other entities responsible for generating the
21 costs that essentially drive the magnitude of that, of that
22 obligation.

23 THE COURT: If the state hadn't enacted statutes
24 delegating the responsibility to the counties, would the
25 obligation lie with the state in the first instance?

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1 MR. EVEN: I think it would -- it would lie
2 certainly with the legislature to decide how to go about
3 meeting its obligation.

4 THE COURT: And if they hadn't done that?

5 MR. EVEN: And if they hadn't done that -- see, then
6 we have a real problem because there isn't -- I suppose it
7 would be an obligation of the state in some sense to do it,
8 but in order to decide how to perform a function, there are
9 so many policy questions and options that the legislature
10 could consider that other than -- other than some kind of
11 very generalized order saying "State, go figure this out,"
12 it's hard to design what that system would be. I suppose
13 it could be argued in a complete vacuum that the
14 responsibility to provide public defense rests at the same
15 level at the -- at which the court that's hearing the case
16 sits, at which the prosecution in the case sits, that it's
17 to be -- that's rather speculative on my part. I do see an
18 argument for saying the default would be that it's with the
19 county, but I think frankly, the very first obligation
20 would lie with the legislature to set some kind of policy
21 of some kind in order to meet a constitutional obligation.

22 THE COURT: Those are my questions. Is there
23 anything else that you have to say that you think might be
24 helpful on this topic?

25 MR. EVEN: On this topic, no. I can talk about a

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1 lot of other topics, but I don't think I need to.

2 THE COURT: I don't think you need to either.
3 That's the thing with quality briefing. I know where to go
4 from that briefing. Thank you.

5 Good afternoon again.

6 MR. MIDGLEY: Good afternoon, Your Honor. John
7 Midgley on behalf of the plaintiffs.

8 THE COURT: So if you were to win at the end of this
9 case, what does my order look like?

10 MR. MIDGLEY: Your order looks like the State of
11 Washington through the Office of Public Defense or
12 otherwise is -- has a duty and the power to remedy
13 unconstitutional conditions in Grays Harbor County Juvenile
14 Defense.

15 THE COURT: There is not much specificity to that
16 order, is there?

17 MR. MIDGLEY: There isn't, and we are specifically
18 asking for that kind of order in order to allow the state
19 and the Office of Public Defense in their expertise and
20 their discretion to do what they think is necessary to
21 remedy that. It's a way for the court to declare the duty,
22 to declare the power of the state and the Office of Public
23 Defense to take action but not to intrude on how they do
24 that action, and we would assume that the state and the
25 Office of Public Defense with that order would do the right

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1 thing.

2 THE COURT: If I were to disagree as to the Office
3 of Public Defense portion but agree that the state as a
4 whole has an obligation would the hope in terms of doing
5 the right thing, quote/unquote, be that the legislature
6 alters the statutory scheme in such a way that remedies
7 these issues?

8 MR. MIDGLEY: That might be one way that the state
9 could address this, but we don't believe that it's the only
10 way they could. There are a number of actions that we
11 believe the state can take including, as we have said in
12 the briefing, the state could actually bring an action
13 itself against Grays Harbor County just as when the
14 Department of Ecology did against Wahkiakum County in the
15 biosolids case that we cited. If there -- if the state has
16 an interest in a cause of action, which the state admits
17 there's a cause of action against Grays Harbor County, if
18 the state has an interest in it, they can sue them. That's
19 drastic. We think that's a final resort, but there are a
20 number of things that the state could do. Certainly
21 legislative relief is one possibility, but it's not the
22 only possibility.

23 THE COURT: So how would you articulate the
24 threshold standard that should apply in cases to determine
25 whether or not suit may be brought against the state?

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1 MR. MIDGLEY: The -- we --

2 THE COURT: This issue has been addressed, but from
3 slightly different angles in different jurisdictions, and
4 while it was helpful to this court to see the decisions
5 from other states, none of them truly felt like it was
6 addressing head on the issue at least as raised by the
7 state in this case.

8 MR. MIDGLEY: Well, actually, I would respectfully
9 disagree at least certainly in the Idaho case. In *Tucker*
10 *versus Idaho* the state I think did raise these issues. I
11 think in those cases that we've cited the state has raised
12 those kinds of issues, and it's been rejected.

13 THE COURT: So how would you articulate the standard
14 that applies?

15 MR. MIDGLEY: The standard that applies is that the
16 state must step in and deal with known constitutional
17 violations of the right to counsel, and there's a reason
18 for that that's really important in terms of what the
19 defendants are saying about state/county relations. The
20 right to counsel is a positive constitutional right, and it
21 requires the state to do enough to implement that right.
22 It is not the typical state/county relationship. It's a
23 different relationship. I know that in the state of
24 Washington we think of counties as being semiautonomous,
25 and they are in some ways, but not other ways, and in this

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1 situation in this scenario it's different. The state --
2 the state has a constitutional duty very much like -- and
3 we've cited the *McCleary* case, and this is not the *McCleary*
4 case. We're not asking for the kind of huge, comprehensive
5 statewide relief, et cetera, as in the *McCleary* case. But
6 the state never engages with us on the positive
7 constitutional right. It changes the entire framework
8 about how this works. That's why those cases like *Tucker*,
9 *Hurrell-Harring* and the *Duncan* case talk about the state
10 can't abdicate this constitutional duty. There are other
11 areas in which the state can just give it to the county.
12 This is an area where the state cannot. That's what those
13 cases mean.

14 THE COURT: And so what would the next step be after
15 that? Clearly it's not the case that a single
16 constitutional violation would be sufficient to support the
17 type of cause of action that you are espousing. Is it some
18 standard of the systemic type of problem? What's required
19 to show that?

20 MR. MIDGLEY: Yes. Well, that the -- what's
21 required to show is a known systemic constitutional
22 violation in a county, and again, if you look at the cases
23 we've cited, that's what they're saying. Those cases are
24 in a slightly different posture. I understand that. But
25 if there's a constitutional violation that's known to the

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1 state or made known to the state, then the state must step
2 in. The state has every constitutional right in our view
3 to delegate in the first instance public defense to the
4 counties, but it cannot completely abdicate that duty. So
5 if there is a known constitutional violation, which there
6 is in this case, and I know the court said "I don't want to
7 determine your facts," but we've put them before the court
8 and the -- no one has responded even though Grays Harbor
9 knows about this case, even though the really crucial facts
10 that we've put before the court are what the Office of
11 Public Defense and the state knows about Grays Harbor.
12 They know that it's unconstitutional. That's what our
13 facts show, and so we've met that standard. And so the
14 facts do matter on this, but they also show that this is
15 one of those cases where the court is justified in saying
16 that the -- the state has to intervene because of the
17 positive constitutional right.

18 THE COURT: From a practical perspective why not
19 just sue Grays Harbor? It's the immediate come-back that
20 seems obvious, and I understand that delegation of
21 day-to-day operations doesn't obviate the need to have the
22 ultimate responsibility with the state, but why not sue
23 Grays Harbor?

24 MR. MIDGLEY: The reason not to sue Grays Harbor is
25 that there is an obligation on the state, there is an

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1 agency of the state -- I understand the court may or may
2 not agree with us that the agency of the state is required.

3 THE COURT: Does it matter that there's an agency of
4 the state to do this if the state has the obligation?
5 Isn't it there regardless of --

6 MR. MIDGLEY: Yes. I think that's true. It makes
7 it more available, more practical for them to work on it
8 because they're such an agency. But the reason not to sue
9 Grays Harbor is this puts the burden not on the state that
10 has the obligation and the state agency that has the
11 obligation; it puts the obligation on private parties like
12 our client to raise the issue. It puts an obligation on
13 the court to have an entire hearing and think about
14 entering an injunction, enforcing an injunction, when what
15 we have is a state duty and a state agency that can take
16 care of that, that can do that, and it's their job to do
17 that under the constitution.

18 THE COURT: What I struggle with here -- I'm
19 struggling with both sides is why this is important -- is
20 that what it feels like you're arguing is that there is
21 some act that the state must do that they are not doing,
22 and traditionally in the context of this court that would
23 come before me on a writ of mandamus which requires some
24 identifiable nondiscretionary act, and that's when the
25 courts feel comfortable about jumping in, the exception, of

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1 course, being *McCleary*, but that's a really big exceptional
2 exception. And I understand that I guess that you are
3 linking this to *McCleary* because this is effectively the
4 only other positive constitutional right, and when I asked
5 for supplemental briefing I didn't use the word "positive
6 right." I believe that is actually an important
7 distinction in this case.

8 MR. MIDGLEY: Yes.

9 THE COURT: And I struggle to think of another
10 positive right, and one of the reasons why that's important
11 to me is that although it's not squarely before me, the
12 courts will be concerned about opening the door to other
13 positive rights and are we having the courts intruding more
14 into legislative or other arenas. Can you think of other
15 positive rights beyond education and this circumstance?

16 MR. MIDGLEY: The only ones that I can recall that
17 have been identified -- actually, we talked -- we did brief
18 a little bit on the school desegregation one, and in Idaho
19 the Idaho Supreme Court talked about reapportionments
20 somehow being --

21 THE COURT: It didn't feel like a positive right.

22 MR. MIDGLEY: That seems different to me too. I
23 think that these two rights are probably the closer.

24 But I want to go back to *McCleary* for a second.
25 *McCleary* explicitly says we're doing a declaratory

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1 judgment; the means is up to the state, and allow the state
2 to do that. And it may have been that in *McCleary* it was
3 more obvious that the legislature had to do something. In
4 this case, as we have discussed, maybe the legislature
5 does, maybe there are other remedies. And so it's not
6 unusual in -- and that's true in other declaratory judgment
7 cases as well. *Coalition for the Homeless versus DSHS* that
8 we've cited basically says there is a duty. We're not
9 going to say exactly how you have to do it, but you have to
10 do it, if you read that case. And so it's not unusual in a
11 declaratory judgment case to say that the means are up to
12 the state officials, and that's what we're requesting.

13 THE COURT: I have no additional questions, but if
14 you have other things that you think would be helpful for
15 me to hear on this issue, I am all ears.

16 MR. MIDGLEY: I wanted to make just a couple more
17 points. First of all, with respect to the *Quitman County*
18 argument, and I think the court alluded to this, really
19 *Quitman County* is not enough. It can't be true given that
20 there's a state -- a positive constitutional right that a
21 county, even though it could do adequate public defense,
22 just doesn't or refuses to. The state -- because of the
23 positive constitutional right to provide for the assistance
24 of counsel, the state would have to step in if Grays Harbor
25 County or some other county said "Well, we're just not

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1 going to provide counsel for juveniles or just provide it
2 when there's going to be more than a year in jail." And
3 what we're saying and what we've shown is that Grays Harbor
4 County essentially doesn't provide counsel for the
5 children. And I'm sure the court understands we're not
6 conceding that the court should not -- should not look at
7 the facts and should not determine the facts on this record
8 because it's completely uncontested. And it's -- what's
9 uncontested crucially is the state's knowledge. That's our
10 standard that we're saying those cases mean, known
11 constitutional violations, and we have that here.

12 THE COURT: Known systemic.

13 MR. MIDGLEY: Known systemic. It has to be
14 systemic. Agree with the court. One instance of
15 ineffective assistance would not be enough. We're talking
16 about a system in Grays Harbor County that has lots of
17 defects that the court's read about that produces a lack of
18 counsel for kids on a systemic basis, totally systemic. It
19 definitely does have to be that. And so the *Quitman County*
20 is just -- it can't be enough. It can't be true. There's
21 simply no principled basis to say it's okay. The state
22 doesn't have to intervene if a county just doesn't provide
23 counsel, doesn't feel like it as opposed to if you read
24 *Quitman County*, they're basically saying if they could,
25 we're not going to intervene. And in that case the county

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1 and not effected individuals were suing and so it's -- in
2 other words it's a different kind of case. Even the *Remick*
3 case out of Utah which the state cited has language in it
4 that basically says there's a point where the state might
5 have to intervene in these cases, and they said you haven't
6 shown enough in this case, but that case says it. And so
7 the -- really the weight of authority is that a known
8 constitutional violation does invoke a state duty, and the
9 declaratory judgment cases say the means can be up to the
10 state or to the officials involved. Thank you.

11 THE COURT: Thank you.

12 You get the last word, Mr. Even.

13 MR. EVEN: Perhaps not all that many of them.

14 I think I'd like to begin just with the last discussion
15 that Mr. Midgley brought up about his proposal for a
16 standard of known systemic violations. There are a couple
17 of problems with that. The first is one that I already
18 mentioned in the primary argument which is that a judicial
19 remedy would lie against the county in that kind of a
20 situation. A case very much like this one could be brought
21 against the county rather than against the state, *Wilbur*
22 being an example of where this has occurred. So it's not
23 that we have a vacuum of a remedy if Mr. Midgley's proposed
24 rather ambiguous generalized remedy isn't available.

25 But beyond that with the idea that there is a known

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1 systemic violation, the suggestion here would be that
2 somebody at the state level, perhaps OPD, is supposed to
3 look at the situation and draw the conclusion that there is
4 a systemic problem in a particular county, and then two
5 problems I think arise from that. The first is that the
6 determination of whether there's a systemic violation is
7 ultimately a judicial determination rather than an
8 administrative one. It's difficult to think that the kind
9 of legal conclusions that you would have to draw in order
10 to come to that view, that there's a systemic violation, is
11 something that you could decide as a final matter, at least
12 in an administrative setting in an agency setting. That
13 seems to me to be the kind of thing that would have to go
14 to a court in any event.

15 The other is if the state official comes to the
16 conclusion to the abiding conviction even that there is a
17 systemic problem in a specific county, what remedy does
18 that official have? It would have to be something that
19 they have statutory authority to do, and as we've talked
20 about in this case, OPD as the existing statutory authority
21 to step in is very limited. Under a tight set of
22 circumstances OPD could cut off state supplemental funding,
23 but that seems counterproductive, not something that
24 promotes the objective that we'd be trying to reach, and
25 it's only available based on specific statutory criteria.

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1 OPD could write a nasty letter. The remedy seems to be
2 rather lacking there.

3 Now, beyond that I guess another -- I'm kind of jumping
4 from point to point here, but --

5 THE COURT: I'm following.

6 MR. EVEN: With the idea that we have a positive
7 right at stake, I'm not convinced that that's really
8 correct. Because we can also state the obligation here as
9 you cannot put a person on trial where their liberty
10 interest is in jeopardy without providing them counsel,
11 counsel that meets the standards that are established. So
12 I'm not sure that the fact -- that the idea that that's a
13 positive right is really dispositive of anything here given
14 that we have a statutory system in which that obligation is
15 placed on the county, not on the state. The remedy
16 therefore at least in the first instance is with the county
17 and not the state.

18 Finally I would -- I think a little bit differently than
19 Mr. Midgley has suggested about the Wahkiakum case as a
20 model of the state going out and suing a local government.
21 In fact that did occur here, but the circumstances were
22 different. In that case the Department of Ecology had a
23 statutory obligation to implement a particular program, had
24 to do with disposal of treated sewage waste. Biosolids was
25 the term. And so the statute gave the department an

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1 obligation to perform this program that called for
2 spreading biosolids on land. Wahkiakum County didn't
3 simply passively fail to do something, as is being alleged
4 here, but passed an ordinance saying not in our county.
5 You can't bring that into our county and apply it here. So
6 that was a direct state preemption case where the argument
7 from the Department of Ecology that the Court of Appeals
8 ultimately accepted was that the state law obligating --
9 setting up this program that Ecology was administering
10 preempted the ability of the local government to pass an
11 ordinance saying not here. So that's a very different kind
12 of scenario.

13 Now, if push came to shove and for some reason the state
14 decided that we were going to go sue a local government, we
15 -- our position certainly would be that we have the
16 authority to do that. But I don't know that we've seen
17 anything in this case or any other authority I'm aware of
18 that would suggest that the state has an obligation to do
19 that absent a finding -- or absent the conclusion that the
20 statutory scheme under which the function is delegated to
21 the county is unconstitutional, and so I 'd ask the court
22 to dismiss the case entirely.

23 THE COURT: Thank you. You raise an issue that I
24 would like to hear from the other side about so we're going
25 to bounce back again.

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1 MR. MIDGLEY: Okay.

2 THE COURT: Which is the standard of a known
3 systemic violation, known. Who needs to know what if we
4 didn't have the Office of Public Defense and there wasn't
5 any sort of entity at the helm that might know? Is it so
6 systemic that a reasonable state observer should know under
7 reasonable ordinary circumstances? What is known here and
8 what authority would I look to to see what that standard is?

9 MR. MIDGLEY: I think the authority you can look to
10 are the cases that we've cited because I think in those
11 cases they are things that have been brought to the state's
12 attention. I think that the -- the -- it can become known
13 in a number of ways, and I -- without wanting to push too
14 hard, we do have the Office of Public Defense, and they do
15 know about Grays Harbor in this case. And Mr. Even was
16 talking about you might have -- somebody might have to show
17 that someone in the Office of Public Defense concludes that
18 there's a systemic problem. Well, the facts in this case
19 show that they -- people in the Office of Public Defense
20 have concluded that --

21 THE COURT: Are we then punishing the state for
22 having on office of public defense because if they didn't
23 have one and no one knew, the ostrich doesn't have
24 knowledge to remedy a problem they don't know exists?

25 MR. MIDGLEY: I don't think it's punishing the

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1 Office of Public Defense to have them address the primary
2 thing that they were created for, to implement the
3 constitutional right to--

4 THE COURT: In terms of identifying the
5 constitutional test I'm worried about hypotheticals about
6 does this make sense. So if we're saying under the
7 constitution -- here we have the Office of Public Defense.
8 Well, let's imagine a world where we don't. So what
9 knowledge requirement would there be in those
10 circumstances? And are we practically punishing the state
11 for having the Office of Public Defense because then it has
12 the knowledge? Whereas if they didn't have OPD they
13 wouldn't have the knowledge and you couldn't sue them then
14 under that test.

15 MR. MIDGLEY: Well, I don't think that's necessarily
16 the case. I think you could make -- you could make the
17 facts known to state officials in a case, and in fact, in
18 this case we've enhanced the state's knowledge through our
19 discovery of what's going on in Grays Harbor. They know
20 more about it now than they did before, and so you could --
21 you could bring it up in a number of ways. And I
22 understand the court's concern about other cases, but in
23 this case they do know. They have concluded it's systemic.
24 Any reasonable person in their situation would conclude
25 that it's unconstitutional, and that's the situation before

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1 the court. There is a line. The line may not be
2 completely clear in every case. It is in this case.

3 THE COURT: Thank you.

4 MR. MIDGLEY: Thank you.

5 THE COURT: Do you want to add anything, Mr. Even?
6 You technically get the last word, but I don't have any
7 more questions.

8 MR. EVEN: In that case, Your Honor, I don't believe
9 I need to add anything.

10 THE COURT: Thank you. The court is prepared to
11 rule at this time.

12 This comes on for cross-motions for summary judgment.
13 Technically the reasoning for my ruling is superfluous, but
14 we do this anyway to explain what we're doing, and it's at
15 least of some limited assistance for any higher court that
16 reviews our decision. In this instance I think it is
17 cleanest to say that I am ruling on the state's motion for
18 summary judgment and reserving or mooting -- whichever way
19 I would go, I'm not touching upon the plaintiffs' motion
20 for summary judgment at this time. I am denying the
21 state's motion for summary judgment.

22 At the same time I am certifying under Rule of Appellate
23 Procedure 2.3 that this is a question and order that
24 involves a controlling question of law as to which there is
25 substantial ground for a difference of opinion and that

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1 immediate review of the order may materially advance the
2 ultimate determination of the litigation. Whether a party
3 decides to do something with that is up to you all, but I
4 believe that this is that type of case, and I'll come back
5 to the reasoning for my ruling.

6 It is clear that the state has delegated operational
7 responsibility for juvenile defense to the counties, but
8 the state cannot delegate its ultimate constitutional
9 obligation. I am moved by the authorities from other
10 jurisdictions that I believe are sufficiently similar to
11 the facts at bar to believe that this kind of suit may
12 proceed even in the absence of a "cannot" situation, which
13 is what the state has articulated as the standard here. I
14 believe that the standard that should apply in this type of
15 case is a knowing systemic violation and that the type of
16 relief that is -- has been requested by the plaintiffs in
17 this case would be appropriate if the facts bore it out.
18 I'm not going to go on at any additional length beyond that
19 because I believe my endorsing the plaintiffs' arguments
20 and the arguments and opinions by other jurisdictions is
21 sufficient to identify the basis for this ruling.

22 I will additionally note that there is nothing squarely
23 on point in this jurisdiction that answers the question
24 before me today, and thus I am in a position where the
25 standard is in effect what do I believe a higher court of

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1 this state would do in these circumstances, and I am doing
2 what I believe a higher court in this state would do in
3 these circumstances based primarily on what appears to be
4 the majority view of other jurisdictions.

5 Regarding my certification of the question, I noted
6 before that I don't feel it is at this time appropriate to
7 rule on the underlying facts. I find it potentially
8 difficult to believe that -- absent a stipulation, which
9 I'm not saying one way or the other would be appropriate,
10 that resolving this case in its entirety on a motion for
11 summary judgment would be appropriate. I think that's
12 difficult to envision that situation, which means what
13 would be happening in this case, if this does not get
14 interlocutorily appealed, is that there would be a bench
15 trial, and I will make the plea that I believe that there
16 is a sufficiently substantial and differing opinion
17 question of law that it might be very beneficial in this
18 case if a higher court were to look at this threshold
19 question, not only because it might obviate the need for
20 significantly more resources moving forward, but even if a
21 higher court would agree that this should move forward,
22 they might have helpful guidance about what the standard
23 should look like, and although the precise standard isn't
24 necessarily one that I needed to articulate here given that
25 CR 56 orders are not to include the reasoning, it is a

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1 necessary path that the court follows in reaching a
2 conclusion, and I believe that any appellate court
3 reviewing this decision today will necessarily head down
4 that path to provide the parties in this case helpful
5 guidance should a higher court agree with me that further
6 proceedings in this case are appropriate.

7 Any questions regarding my ruling?

8 MR. EVEN: Not from me, Your Honor.

9 MR. MIDGLEY: We don't have a question about the
10 ruling. We do have -- we did submit a proposed extension
11 of the discovery cutoff. And it may well be obviously that
12 there might not be a trial, et cetera, although the
13 appellate court has to decide whether to take the case.

14 THE COURT: And let me ask this question first, and
15 I'm not going to require you to answer if you need to
16 consult or consider, but will there be review sought of
17 this decision that you're able to reference at this moment?
18 I can speculate, but I'd rather hear it from you.

19 MR. EVEN: Your Honor, I think that it's likely, but
20 I would like to have a conversation in the office.

21 THE COURT: Understood. And not that it matters,
22 but hopefully my comments made it sufficiently clear that I
23 would welcome that in this case. Again, doesn't matter.
24 You do what you need to do to represent your clients, but I
25 think it would be helpful for the parties and me to have

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1 that in this case.

2 And so what I would like to do, anticipating that that
3 would occur, and also understanding that this is likely the
4 type of case where such review would hopefully or likely be
5 granted, that perhaps I strike future dates in this case
6 with a status hearing set for some identifiable time in the
7 future that is stricken if I look at the file before that
8 date and see that review has been granted. Does that sound
9 like a reasonable and efficient approach for everyone?

10 MR. MIDGLEY: It does.

11 MR. EVEN: Yes, it does, Your Honor.

12 THE COURT: So I'm going to -- and I'll just do this
13 administratively looking to Madam Clerk to make sure that
14 this is something that I'm allowed to do. I'm going to
15 strike the future dates thinking I'm going to look to
16 counsel to see how long they think it would take to get an
17 answer yea or nay as to whether we keep moving at this
18 level for now.

19 MR. EVEN: Your Honor, it's either the coming week
20 or, given the holidays, early January.

21 THE COURT: And by my question I was meaning both
22 your decision as well as the higher court's decision as --

23 MR. MIDGLEY: I think it takes a few -- two or three
24 months to get the court to decide whether to take it I
25 think.

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1 THE COURT: And that was my recollection, but I
2 trust that your experience with this is probably more
3 recent than mine.

4 MR. EVEN: That's right.

5 MR. MIDGLEY: Yeah. It's going to be about that
6 amount of length.

7 MR. EVEN: I think so. It will be a few months.

8 THE COURT: And so would setting a three-month-out
9 status be something that makes sense? I mean, these are
10 important issues, and every day that passes where there
11 could be relief granted is unfortunate, but there's also
12 the reality of the case, and I think this makes the most
13 sense.

14 MR. MIDGLEY: That would be great.

15 THE COURT: So I'm going to set a status hearing for
16 March 29th, and matters may happen between now and then.
17 If something changes significantly, of course the parties
18 are welcome to file a motion to bring something to my
19 attention, but otherwise, we'll see where things stand.

20 MR. EVEN: Is March 29 a Friday law and motion
21 calendar?

22 THE COURT: It is a Friday on my motion calendar at
23 nine o'clock. That's what I intended. Thank you.

24 MR. MIDGLEY: Thank you.

25 THE COURT: Thank you. Anything else I can do for

Appendix B

1 you this afternoon?

2 MR. EVEN: Well, we need to enter an order. Perhaps
3 counsel -- we can discuss this.

4 MR. MIDGLEY: Yeah.

5 THE COURT: So I'm here to sign it whenever you all
6 are ready to do that. Given that it is inappropriate, as
7 I've said many times, and I always say, to add reasoning in
8 the order, all we need is a listing of what was submitted,
9 and then I would like to have someone interlineate the
10 certification language, and that's all that needs to
11 happen. I'm comfortable with that being written into
12 someone's order if someone brought it with them, but if you
13 didn't bring one, I understand.

14 MR. EVEN: I brought an order that could be a form
15 for that. And it looks like they may have as well.

16 THE COURT: So I'll leave the bench briefly to allow
17 you to confer regarding form. You may notify Madam Clerk
18 when you are ready and I will come back out to sign.

19 MR. MIDGLEY: Thank you, Your Honor.

20 MR. EVEN: Thank you, Your Honor.

21 (A recess was taken.)

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Appendix B

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ATTORNEY GENERAL'S OFFICE
TORTS DIVISION - OLYMPIA

HONORABLE CHRISTOPHER LANESE

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IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

COLLEEN DAVISON, legal guardian for K.B.,
a minor, on behalf of themselves and others
similarly situated and GARY MURRELL,

No. 17-2-01968-34

Plaintiffs,

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DECLARATORY
RELIEF**

v.

STATE OF WASHINGTON and
WASHINGTON STATE OFFICE OF PUBLIC
DEFENSE,

Defendants.

INTRODUCTION

1. This is a class action brought pursuant to the Declaratory Judgment Act (Chapter 7.24 RCW), the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 3 and 22 of the Washington State Constitution, on behalf of all juveniles charged with offenses under RCW 13.40 in the Grays Harbor County Juvenile Court who have the constitutional right to appointment of counsel for their defense.

2. Almost exactly fifty years ago, on May 15, 1967, the U.S. Supreme Court held that juveniles facing "delinquency" proceedings (now in Washington called juvenile offenses under RCW 13.40) not only possess the same right to counsel as adults, but have a greater need

1 for counsel than adults. *In re Gault*, 387 U.S. 1, 87 S. Ct. 1248, 18 L.Ed. 2d 527 (1967) (juvenile
2 right to counsel based on 14th Amendment due process); *see also Gideon v. Wainwright*,
3 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799, 93 A.L.R.2d 733 (1963) (6th Amendment right to
4 counsel). “[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone”; thus,
5 children have, at a minimum, the same constitutional right to counsel and to due process as
6 adults. *Gault*, 387 U.S. at 13. The Washington State constitution contains the same fundamental
7 protections. Wash. Const. art. I, § 3 (due process); Wash. Const. art. I, § 22 (right to counsel).
8 *See also* RCW 13.40.140 (recognizing juveniles’ right to counsel); RCW 10.101.020 (same);
9 JuCR 9.2(d) (same).

10 3. If anything, the right to counsel is even more important for children than adults
11 because children generally cannot advocate for their own legal rights or make decisions about
12 what is in their best interest without guidance. *See, e.g., J.D.B. v. N. Carolina*, 564 U.S. 261,
13 272, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011); *Vovos v. Grant*, 87 Wn.2d 697, 700-01, 555
14 P.2d 1343 (1976); *see also State v. A.N.J.*, 168 Wn.2d. 91, 225 P.3d 956 (2010).

15 4. State law explicitly requires legal representation for children “at all critical stages
16 of the proceedings,” including any proceeding in which the child faces the possibility of being
17 confined. Wash. Const. art I, §§ 3 and 22 (state constitutional right to due process and right to
18 counsel); *State v. A.N.J.*, 168 Wn.2d. 91 (discussing juvenile’s right to counsel in offender
19 proceedings); RCW 10.101.005; RCW 13.40.140; JuCR 9.2(d) and JuCR 9.2 Standards.

20 5. These clearly established constitutional rights are being violated in the state of
21 Washington. As a direct result of systemic and structural deficiencies known to Defendants,
22 juvenile public defense services in Grays Harbor County operate well below the constitutionally
23 required minimum of subjecting the prosecution’s case to “the crucible of meaningful adversarial
24 testing.” *United States v. Cronin*, 466 U.S. 648, 656, 659, 104 S. Ct. 2039, 80 L. Ed. 2d 657
25 (1984) (unless a lawyer provides meaningful assistance, “there has been a denial of Sixth
26 Amendment rights that makes the adversary process itself presumptively unreliable”); *Wilbur v.*
27 *Cities of Mount Vernon & Burlington*, 989 F. Supp. 2d 1122, 1130 (W.D. Wash. 2013).

1 6. In the Grays Harbor County juvenile public defense system, despite a lawyer
2 having been appointed to represent a child accused of an offense, the absence of advocacy and
3 adversarial testing results in the functional equivalent of pre-*Gault* proceedings where there was
4 no right to counsel at all.

5 7. Plaintiffs seek declaratory relief against Defendants the State of Washington and
6 the Washington State Office of Public Defense (“OPD”), to remedy the persistent violation of
7 the constitutional right to counsel that children, including Plaintiff K.B. and the Class members,
8 have suffered and will continue to suffer unless the relief requested is ordered.

9 8. Serious ongoing harm is being inflicted on children as a result of the
10 constitutional violations described in this Complaint. For example, a 15-year-old was kept
11 incarcerated while serving a sentence for probation violations that was four times the length
12 allowed by statute, and an 11-year-old child has spent two months in the Grays Harbor Juvenile
13 Detention Center without a capacity hearing, also in violation of state law. In both cases, the
14 public defense system failed to recognize the clear violation of Washington’s juvenile laws until
15 Defendant OPD brought the legal violation to its attention.

16 9. Defendants are also aware that in the Grays Harbor County’s juvenile public
17 defense system, among other constitutional violations, children: (1) are routinely held in
18 detention on bail amounts that are not challenged; (2) receive inadequate and non-confidential
19 communication with their public defender; (3) receive inadequate advisement of rights, options,
20 and consequences from the public defender; (4) fail to receive adequate investigation of the facts,
21 release options, and sentencing options; (5) fail to have their rights protected through motions
22 and trials and the use of expert witnesses; (6) fail to have their rights protected when interrogated
23 by the court; and (7) plead guilty with inadequate consideration of legal defenses.

24 10. It is well-settled law that the State of Washington is ultimately responsible for
25 ensuring the provision of constitutionally adequate public defense services throughout the state.
26 *Gideon*, 372 U.S. at 342-43.

1 11. Courts across the country have recognized that states cannot avoid their
2 constitutional responsibilities by delegating such responsibilities to localities. *See, e.g., Duncan*
3 *v. Michigan*, 284 Mich, App. 724, 774 N.W.2d 89, 97-98, 104—105 (2009); *Phillips v. State of*
4 *Cal.*, Fresno County Superior Court, Case No. 15CECG02201, 4/11/16; *New York Cty. Lawyers'*
5 *Ass 'n v. State of New York*, 192 Misc. 2d 724, 745 N.Y.S.2d 376, 381 (Sup. Ct. 2002), *appeal*
6 *dismissed*, 305 A.D.2d 1123, 759 N.Y.S.2d 653 (2003); *Flournoy v. State of Georgia*, Fulton
7 County, GA Superior Court, consent decree, Case No. 2009CV178947.

8 12. Defendants have known for years that juveniles accused of offenses in Grays
9 Harbor County are systematically deprived of their constitutional right to counsel and suffer
10 great harm as a result.

11 13. Defendant OPD is a highly competent and well-run agency dedicated to
12 improving public defense in Washington. When it has been able to do so, such as in three public
13 defense pilot projects in other counties—including one in a rural juvenile court—it has achieved
14 demonstrably improved results in public defense services. But participation in these projects was
15 on a voluntary basis and OPD has taken the position that it lacks the authority to require
16 constitutional compliance through meaningful supervision and oversight of county public
17 defense systems. The result is services in counties that fall below the constitutional minimum.

18 14. As a result, Defendant OPD does not have sufficient information about attorney
19 caseloads to determine whether public defenders are above the caseload requirements, even
20 when it knows public defenders hold contracts across multiple jurisdictions, a longstanding
21 practice in Grays Harbor County. Neither does OPD require the submission of private caseload
22 numbers.

23 15. Defendants are well aware of the long-standing national and state standards that
24 provide guidance as to the hallmarks of a constitutionally adequate system, and the ways these
25 standards are being violated by the juvenile public defense system in Grays Harbor County.
26 These hallmarks include independence of the public defense function; provision of sufficient
27 time and a confidential space within which defense counsel can meet with clients; workload

1 controls for defense counsel; assurance that defense counsel's ability, training, and experience
2 match the complexity of their cases; provision of required continuing legal education; and
3 systematic review and supervision of defense counsel according to nationally and locally adopted
4 standards. *See, e.g.*, ABA Ten Principles of a Public Defense Delivery System.

5 16. Despite this knowledge and their efforts to bring violations of the law to the
6 attention of this system, Defendants have not taken enforcement action to ensure that these
7 deficiencies are remedied and that the public defense services provided to these children is
8 constitutionally adequate.

9 17. Plaintiff K.B. and the Class members suffer and will continue to be at serious
10 imminent risk of suffering irreparable harm as a result of a widespread systemic failure wholly
11 unrelated to the identity of any particular juvenile defendant. They plead guilty even when
12 meritorious defenses or legal motions are available, with inadequate investigation, and with
13 inadequate understanding of the consequences of conviction and options available to ameliorate
14 those consequences. They spend unlawful periods of time incarcerated and receive harsher
15 sentences than the facts of their cases warrant. And taxpayer funds are being spent on an
16 unconstitutional public defense system.

17 18. Plaintiffs will continue to suffer these injuries as long as Defendants fail to
18 exercise appropriate supervisory and enforcement authority over the provision of public defense
19 services in parts of the State where the public defense system does not comply with
20 constitutional requirements, such as the Grays Harbor County juvenile public defense system.

21 19. Plaintiffs have no adequate remedy at law and seek a declaration that (1) the
22 services they currently receive are constitutionally inadequate and (2) Defendants have the
23 authority to take the measures necessary to ensure the provision of constitutionally adequate
24 services.

1 **JURISDICTION AND VENUE**

2 20. The Court has jurisdiction over this action for declaratory relief pursuant to
3 Article IV, Section 6 of the Washington State Constitution, RCW 2.08.010, and RCW 7.24.

4 21. Venue is proper in this Court pursuant to RCW 4.92.010(5) because Defendants
5 are the State and a state agency.

6 **PARTIES**

7 **Plaintiffs**

8 **Plaintiff Colleen Davison, legal guardian for K.B., a minor**

9 22. Plaintiffs Davison and K.B. are and at all times pertinent herein have been
10 residents of Grays Harbor County, Washington. K.B. is an 11 year old indigent juvenile girl who
11 has been charged with an offense under RCW 13.40 in Grays Harbor County Juvenile Court and
12 her case is in pretrial status. Plaintiff K.B. was assigned a public defender by the Grays Harbor
13 County Juvenile Court.

14 23. On February 1, 2017, K.B. was taken into custody for two counts of alleged
15 second-degree assault against her grandmother, Plaintiff Davison, and against a neighbor. The
16 incident allegedly involved display of a kitchen knife and threats but no physical injury to
17 anyone. Davison is the adoptive mother and legal guardian of K.B. K.B. has been diagnosed with
18 mental health conditions for which she has received treatment for years. She has no prior
19 juvenile court history.

20 24. RCW 9A.04.050 and JuCR 7.6 require a capacity hearing for juveniles under the
21 age of 12 within 14 days of being charged with an offense. The Grays Harbor County public
22 defender appointed to represent K.B. was unaware of these legal requirements and failed to
23 challenge the lack of a capacity hearing within the statutorily mandated time period until after
24 Defendant OPD brought the violation to the public defender's attention.

25 25. Although the initial charges were dismissed, K.B. allegedly spit on a guard while
26 she was illegally detained. Two months after being taken into custody, K.B. has still not been
27

1 released, and has yet to receive a capacity hearing. She is currently being held on a \$5,000 bail
2 that went unchallenged by her public defender.

3 Plaintiff Gary Murrell

4 26. Plaintiff Gary Murrell is a longtime resident of Grays Harbor County and pays
5 taxes to both the County and the State of Washington. Gary Murrell is interested in ensuring that
6 constitutionally adequate public defense is provided to indigent juveniles in Grays Harbor
7 County and that public defense funds are expended consistent with the requirements of the
8 federal and state Constitutions.

9 Defendants

10 27. Defendant State of Washington has a duty to adhere to the U.S. Constitution, and
11 must protect and enforce the constitution of the State of Washington. A declaratory judgment is
12 sought against Defendant State of Washington based on violation of its duty to comply with the
13 federal and state Constitutions.

14 28. Defendant OPD is a state agency assigned the responsibility “to implement the
15 constitutional and statutory guarantees of counsel and to ensure the effective and efficient
16 delivery of indigent defense services funded by the state.” RCW 2.70.005. Defendant OPD
17 maintains its principal office in Thurston County, at 711 Capitol Way South, Suite 106, Olympia,
18 WA 98501.

19 CLASS ACTION ALLEGATIONS

20 29. Plaintiff Davison, on behalf of the minor K.B., brings this action pursuant to CR
21 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively, the “Class
22 Members”) as members of the following proposed plaintiff class (the “Class”):

23 All indigent persons who have or will have juvenile offender cases
24 pending in pretrial status in Grays Harbor County Juvenile Court,
and who have the constitutional right to appointment of counsel.

25 The Class is so numerous that the individual joinder of all members is impracticable. The class is
26 both fluid and inherently transitory, with new charges being filed and some cases reaching
27

1 disposition every week. Over 100 children each year are charged with one or more juvenile
2 offenses in the Grays Harbor County Juvenile Court, are appointed a public defender, and rely on
3 that public defender for legal representation. Although the number of cases pending in pretrial
4 status varies week to week, it is estimated that approximately 20 cases are in pretrial status at any
5 given time.

6 30. In addition to the fact that the Class would consist of many members, the
7 practicalities of locating and communicating with each Class member and their parent or legal
8 guardian are virtually insurmountable, making joinder of all members of the class impracticable
9 if not impossible. Moreover, the vulnerability of the population at issue and the need for
10 protection for such a large number of juveniles warrants class treatment so that the relief sought
11 can be granted to all Class members at once.

12 31. The rights that Plaintiffs assert in this action are universally applicable to all
13 members of the proposed Class, and the constitutional, statutory, and contractual obligations
14 governing the provision of actual representation to juveniles are common to all Class members.

15 32. The questions of law and fact raised by the named Plaintiffs' claims are common
16 to, and typical of, those raised by the Class they seek to represent. Each Plaintiff relies on the
17 State for legal representation during the course of his or her juvenile offender proceedings, and is
18 harmed by the Defendants' failure to provide oversight to Washington's indigent criminal
19 defense system.

20 33. Questions of fact common to the Class include:

- 21 a. Whether Defendants have failed to ensure that juvenile public defense
22 services that put the prosecution's case to the crucible of meaningful
23 adversarial testing are provided in Grays Harbor County;
- 24 b. Whether Defendant's actions and omissions have resulted in a constitutionally
25 deficient system for indigent juvenile public defense in Grays Harbor County;
26 and
27

1 c. Whether, as a result Defendants' actions and omissions, Class Members are
2 subjected to the risk of harm by the public defense system's failure to provide
3 them with constitutionally adequate legal representation.

4 34. Questions of law common to the Class include:

5 a. Whether Defendants have an obligation under the federal and state
6 constitutions to ensure that indigent children before the juvenile court in
7 Grays Harbor County receive constitutionally adequate representation at all
8 critical stages of the proceedings;

9 b. Whether Defendants are violating their obligation under the Sixth and
10 Fourteenth Amendments to the United States Constitution to ensure that
11 indigent juveniles accused of juvenile offenses in state court proceedings in
12 Grays Harbor County receive constitutionally adequate representation; and

13 c. Whether Defendants are violating their obligation under the Washington State
14 Constitution to ensure that indigent juveniles accused of juvenile offenses in
15 state court proceedings in Grays Harbor County receive constitutionally
16 adequate legal representation.

17 35. The violations of law and resulting harms alleged by the named Plaintiffs are
18 typical of the legal violations and harms suffered by all Class members.

19 36. Plaintiffs' claims are typical of the claims of the proposed Class members because
20 they all arise from a common course of conduct—namely, Defendants' failure to exercise their
21 authority to remedy a public defense system that routinely deprives juveniles of the right to
22 assistance of counsel in violation of the United States Constitution and the Washington
23 Constitution.

24 37. Moreover, all of the claims are based on the same legal theories, and the named
25 Plaintiffs and Class members all seek the same declaratory relief.

26 38. Plaintiff Class representative will fairly and adequately protect the interests of the
27 Plaintiffs.

1 39. The interests of all class members are the same with regard to the
2 unconstitutionality of the Grays Harbor County juvenile public defense system and Defendants'
3 inaction to remedy it.

4 40. Plaintiffs' counsel know of no conflicts of interest between the Class
5 representatives and absent Class members with respect to the matters at issue in this litigation;
6 the Class representative will vigorously prosecute the suit on behalf of the Class; and the Class
7 representative is represented by experienced counsel.

8 41. Plaintiffs are represented by cooperating attorneys for and attorneys employed by
9 the ACLU of Washington State, a nonprofit legal organization whose attorneys have substantial
10 experience and expertise in civil litigation, class actions, and indigent criminal defense matters.
11 Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and
12 have committed sufficient resources to represent the Class.

13 42. The maintenance of the action as a class action will be superior to other available
14 methods of adjudication and will promote the convenient administration of justice. Moreover, the
15 prosecution of separate actions by individual members of the Class could result in inconsistent or
16 varying adjudications with respect to individual members of the Class and/or one or more of the
17 Defendants.

18 43. Class-wide declaratory relief is appropriate because as to all Class members,
19 Defendants have failed to exercise their authority to ensure that the Grays Harbor County
20 juvenile public defense system is appropriately supervised and systematically reviewed for
21 compliance with national and local standards.

22 44. Defendants have acted or failed to act on grounds generally applicable to all
23 Plaintiffs, necessitating declaratory relief for the Class. Even where—as here—Defendants know
24 that a county is taking no steps to appropriately supervise and review its juvenile public defender
25 system, it has neither engaged in such supervision and review itself nor required that the counties
26 do so themselves.

1 50. In 2009, the National Juvenile Defender Center (NJDC) published the Role of
2 Juvenile Defense Counsel in Delinquency Court, stressing a juvenile defense attorney’s
3 obligations to: (a) provide competent, prompt, and diligent representation; (b) investigate cases
4 to find witnesses, examine forensic evidence, locate and inspect tangible objects and other
5 evidence that might tend to exculpate the client, lead to the exclusion of inculpatory evidence, or
6 buttress the client’s potential defenses; (c) obtain discovery, file motions, and make arguments to
7 protect the client’s rights; (d) prepare for and engage in dispositional advocacy; (e) research and
8 understand the client’s legal rights and options; (f) pursue diversion and other means of case
9 dismissal; (g) negotiate reasonable plea offers and ensure clients make well-considered decisions
10 about whether to plead or go to trial; and (h) and communicate in a safe, confidential
11 environment the case’s legal progression in frequent discussions using age-appropriate language,
12 so that the client is a fully informed and proactive participant at all stages of the proceedings.

13 51. Washington has also promulgated clear standards for public defense, including
14 standards specifically applicable to juvenile public defense systems. In 2012, the Washington
15 Supreme Court promulgated its Standards for Indigent Defense (“Standards”), which largely
16 codified the Washington State Bar Association (“WSBA”) standards of the same name. CrR 3.1
17 Standards; JuCR 9.2 Standards. The Standards applicable to juvenile offender cases, JuCR 9.2
18 Standards, state that caseloads must “allow each lawyer to give each client the time and effort
19 necessary to ensure effective representation.”

20 52. The Standards set caseload limits, adjusted if a public defender is not providing
21 public defense services in one jurisdiction full-time, has a private practice, or has a mix of
22 juvenile offender cases and other types of cases. They require careful evaluation of the evidence
23 and the law, as well as thorough communication with clients, before a guilty plea can be entered.

24 53. The Standards require use of investigative services as appropriate, familiarity
25 “with the statutes, court rules, constitutional provisions, and case law relevant to their practice
26 area,” and familiarity “with mental health issues and be able to identify the need to obtain expert
27 services.”

1 54. The 2011 WSBA Standards for Indigent Defense, available at
2 http://wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on
3 [%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20\(2011\).ashx](http://wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx)
4 , additionally require maintaining “a case-reporting and management information system which
5 includes number and type of cases, attorney hours and disposition,” and “systematic monitoring
6 and evaluation of attorney performance based upon publicized criteria. Supervision and
7 evaluation efforts should include review of time and caseload records, review and inspection of
8 transcripts, in-court observations, and periodic conferences.”

9 **B. Defendants Know That the Grays Harbor County Juvenile Public Defense**
10 **System Fails to Comply with Standards Essential to the Provision of**
11 **Constitutionally-Adequate Public Defense Services But Fail to Exercise**
12 **Appropriate Supervision and Oversight**

13 55. Defendants have known for years that the provision of juvenile public defense
14 services in Grays Harbor County is constitutionally deficient and fails to meet well-established
15 national and state standards for constitutionally adequate public defense systems.

16 **a. Independence of the Public Defense Function**

17 56. Defendant OPD knows the importance of independence of the public defense
18 function, and that the public defense function should in particular not operate under the oversight
19 of the judiciary in order to ensure independence from undue political pressures.

20 57. Defendant OPD knows that this standard has long been violated in the Grays
21 Harbor County juvenile public defense system. It knows, for example, that the juvenile court
22 judge in Grays Harbor County is intimately involved with the selection process for juvenile
23 public defenders, and that the judge and prosecutor regularly meet to decide outcomes of
24 juvenile court cases and then inform the public defender of what will happen to her clients.

25 58. Defendants are also aware that both in juvenile offender and in juvenile status
26 offender cases, where the same public defender and judges handled the cases, there was great
27 pressure on the public defender to not raise certain issues, not advocate for the clients, and to
limit the hearing on each case to a few minutes. For example, public defenders rarely if ever

1 object to the onerous and overbroad conditions of probation imposed by the court, or to the
2 prolonged court jurisdiction for probation supervision routinely imposed, despite their knowing
3 this virtually guarantees that the juvenile will be alleged in violation and will face repeated and
4 extended time in detention for the alleged violations. Additionally, juveniles are held on
5 excessive amounts of bail instead of being released back to their families in the community when
6 they present no flight risk, and bail is routinely set at \$5,000, without any meaningful assessment
7 of danger to the community or ability to pay. Because the public defender never challenges the
8 standardized bail determination, juveniles spend prolonged and unnecessary amounts of time
9 incarcerated.

10 59. Defendant OPD knows, from public defense contract documents submitted to it
11 by Grays Harbor County in applying for OPD grants, that the County repeatedly renewed the
12 contract for the former public defense provider despite serious concerns with the independence
13 of the public defense function.

14 60. Defendant OPD knows that the County issues the juvenile public defense
15 contracts “based upon the lowest and best bid.” In deciding who to award the contract to,
16 County Commissioners have repeatedly accepted, with virtually no discussion, the
17 recommendations of the Judge overseeing the Court where the attorney will be obligated to
18 challenge the Court’s actions in the course of defending the clients. In December 2016, the
19 County awarded the new contract for lead juvenile public defense to the person who previously
20 held the conflict contract and was most likely to carry on the lack of independence of the public
21 defense function, rather than to bidders with the same or better qualifications.

22 61. Defendants also know that the only form of public defender supervision,
23 monitoring, or oversight in Grays Harbor County is “Presiding Judge monitoring,” and the judge
24 provides no performance reviews. The county has informed Defendant OPD that the Presiding
25 Judge is in charge of receiving any complaints about public defense as well.

26 62. As a result of the lack of independence, Defendants know that juveniles in Grays
27 Harbor suffer harm. For example, in Grays Harbor County Juvenile Court Case No. 15-8-27-4,

1 when the violation of the 30-day limit on detention was brought to the public defender's
2 attention, the public defender refused to file a motion challenging the sentence and stated that he
3 feared losing the public defense contract if he took action.

4 63. Defendant OPD knows that in Plaintiff K.B.'s case, while she was being illegally
5 detained because a capacity hearing had not been scheduled, the prosecutor, public defender, and
6 juvenile court were actively supporting a guilty plea to felony assault by the 11-year-old child
7 who had not been found to have capacity.

8 64. Despite this knowledge, Defendants have failed to exercise appropriate
9 supervision and monitoring to ensure that the public defense function in Grays Harbor County
10 function independently of the judiciary and prosecution.

11 **b. Confidentiality and Client Communications**

12 65. Defendant OPD knows that the juvenile public defender in Grays Harbor County
13 spends little to no time communicating in a confidential setting with clients, advising them of
14 their rights and options in an age appropriate manner, and preparing them to answer the court's
15 questions or testify at hearings.

16 66. The public defender either does not meet with indigent juvenile clients and other
17 witnesses in advance of court hearings, or when the public defender does discuss cases with
18 clients, it is often on the day of the hearing, the afternoon before, or when court is in session for
19 other clients, and may take place in the detention center, in the courtroom, or in the hallway just
20 outside the courtroom where confidentiality is compromised.

21 67. Despite this knowledge, Defendants have taken no steps to ensure that the
22 juvenile public defender in Grays Harbor County ensures confidential communications and
23 communicates regularly with her clients.

24 68. As a direct result of Defendants' inactions, juvenile public defense clients in
25 Grays Harbor suffer serious injury. Because client communication, if any, takes place just prior
26 to court hearings and for a short amount of time, juvenile clients—particularly those with mental
27 health or other disabilities—are unable to grasp the legal complexities facing them and are forced

1 to make life-altering decisions without adequately understanding their rights and options. They
2 are often unaware of their right to remain silent, and routinely in court hearings make
3 incriminating statements or statements directly contrary to their interests, reflecting inadequate
4 communication with their public defender.

5 69. As a result of the Defendants' inactions as to inadequate client communication,
6 indigent juvenile defendants are being deprived of adequate consultation and communication
7 with attorneys; indigent juvenile defendants must make decisions about their rights and whether
8 to contest issues without adequate factual or legal investigation by their public defender; indigent
9 juvenile defendants are being deprived of meaningful opportunities to present a defense; indigent
10 juvenile defendants are waiving their rights without proper consultation with or advice from
11 attorneys; at court hearings where the public defender said the juvenile client was ready to enter
12 a guilty plea, the juvenile expressed confusion and lack of understanding about the plea; indigent
13 juvenile defendants are not receiving accurate information regarding detention alternatives, plea
14 alternatives, dispositional alternatives, plea consequences and consequences associated with
15 immigration status; and indigent juveniles are spending excessive amounts of time incarcerated
16 pretrial, for contempt, and for probation violations.

17 **c. Workload**

18 70. Defendant OPD is well aware of the critical importance of limiting juvenile
19 defender workloads so that defenders can provide constitutionally adequate representation, but it
20 has failed to ensure that workloads in the Grays Harbor County juvenile public defense system
21 do not exceed constitutional standards.

22 71. Although JuCR 9.2 requires public defenders to certify that they are in
23 compliance with caseload limits, Defendants require only that those certifications be filed with
24 each individual jurisdiction.

25 72. Defendants collect information as part of Defendant OPD's statutory authority to
26 disburse grants to counties under RCW 10.101.050, including to Grays Harbor County.
27 Defendant OPD awarded Grays Harbor County \$77,934 for 2016. From that grant application,

1 Defendants know that in 2015 the juvenile defender handled 109 offender cases, 46 probation
2 violation cases, and 266 status offense cases.

3 73. However, Defendant OPD does not itself receive public defender caseload
4 certifications, even when public defenders are known to hold multiple contracts across various
5 jurisdictions. As a result, certifications are meaningless when a public defender carries contracts
6 in multiple jurisdictions and/or engages in paid private representation or other legal work. There
7 are no structural barriers to ensure that public defenders in Grays Harbor do not also exceed their
8 caseload limits. The county's court administrator states that the county possesses no caseload
9 records; records submitted to the state Administrative Office of the Courts are the only caseload
10 records that exist, demonstrating that the state does not monitor caseloads.

11 74. The county also has stated that no time records exist to show the amount of time
12 the juvenile public defender spends on cases, further demonstrating the deficiency of
13 Defendants' monitoring/oversight systems.

14 75. Defendants have conducted multiple site visits to Grays Harbor County, including
15 one specifically regarding juvenile court public defense in connection with an application for an
16 Office of Juvenile Justice and Delinquency Program Grant. At one of those visits, Defendants
17 were informed by the presiding juvenile court judge that the court did not plan to oversee
18 compliance with caseload limits and would instead rely only on the filing of certification
19 statements.

20 76. Defendants are aware that Grays Harbor County has long contracted with a single
21 attorney for all juvenile offender and all juvenile status offender cases where there is a right to
22 counsel, except where there is a conflict. Defendants are also aware that these public defenders
23 often have additional private cases, have simultaneously served as judges, and have public
24 defense contracts with other courts.

25 77. Upon information and belief, Defendants know that there is inadequate conflicts
26 screening and case tracking, despite the fact that public defenders routinely hold multiple
27 contracts across many jurisdictions.

1 78. Despite knowing about the lack of documentation necessary to enforce caseload
2 limits, Defendants have taken no action to monitor or enforce caseload limits in the Grays
3 Harbor juvenile court.

4 79. As a result of Defendants' inaction, juveniles entitled to representation suffer
5 harm. They receive representation from public defenders who spend little to no time
6 investigating, litigating, or communicating with them about their cases, much less putting the
7 prosecution's case to the "crucible of adversarial testing."

8 **d. Ability, Training, and Experience Must Match the Complexity of the**
9 **Case**

10 80. Defendants are well aware that Grays Harbor County makes no attempt to match
11 the ability, training, and experience of its public defenders with the complexity of their clients'
12 cases. One public defender receives all cases unless there is a conflict, regardless of the cases'
13 complexity or her ability to handle a particular type of case.

14 81. As a result, children in Grays Harbor are routinely represented by public
15 defenders who do not have the necessary ability, training, or experience. They suffer great harm
16 as a result.

17 82. As an example, on October 15, 2015, in Grays Harbor County Juvenile Court
18 Case No. 15-8-27-4, a juvenile was sentenced to 120 days in detention for probation violations
19 being considered in a single hearing. RCW 13.40.200(3) limits the detention time for violations
20 considered in a single hearing to 30 days. Yet the public defender appointed to represent the
21 juvenile failed to take any action showing knowledge of this legal violation or attempting to
22 remedy it, even after Defendant OPD brought it to his attention.

23 83. As another example, on February 1, 2017, Plaintiff K.B., an 11-year-old girl, was
24 taken into custody. Because she is eleven, she is presumed incapable of committing a crime
25 under RCW 9A.04.050, and the court has no authority to act without conducting a capacity
26 hearing within 14 days. JuCR 7.6; *State v. Golden*, 112 Wn.App. 68, 47 P.3d 587 (2002), *review*
27 *denied*, 148 Wn.2d 1005 (2003). The Grays Harbor County public defender appointed to

1 represent K.B. failed to request a capacity hearing until Defendant OPD brought the violation to
2 the public defender's attention.

3 84. Other examples include that juveniles are denied access to alternative sentences
4 even when they qualify. During a revocation of SSODA hearing, in which the judge on the
5 record raised a question of law about whether one of the public defender's clients could be sent
6 to a residential treatment facility in another state as an alternative to being sent to the state
7 juvenile prison system, the public defender made no investigation into the law that would allow
8 the Court to enter such an order nor did he investigate the prior treatment contract the Court
9 entered into. The public defender also made no investigation into alternative placements in
10 Washington, despite the judge's remarks on the record that he would not send the client back to
11 another state.

12 85. Meritorious legal defenses such as self-defense are not raised and juveniles
13 inappropriately plead guilty and/or receive harsher sentences than the facts of their cases warrant.
14 For example, one child was ready to enter a guilty plea to assault even though he had been
15 threatened with a knife. When these facts emerged upon colloquy with the judge, the plea could
16 not be entered and the child ended up being detained another two weeks.

17 86. Despite knowledge of these specific injuries, Defendants have failed to take any
18 actions to ensure that the systemic changes needed to ensure compliance with this standard are
19 made so that future children do not suffer similar harm.

20 **e. Parity Between Prosecution and Defense Counsel Functions**

21 87. Defendants have long known that the defense and prosecutorial functions in the
22 Grays Harbor County juvenile system are not remotely treated as an equal partner in the justice
23 system.

24 88. Indeed, Defendant OPD knows that the juvenile court judge regularly meets with
25 the prosecutor to pre-determine the outcome of juvenile court cases and that the public defender
26 is later informed of what those outcomes will be and expected to acquiesce.

1 89. Upon information and belief, Defendant OPD also knows that the although the
2 prosecutor is a full time county employee, the juvenile public defender is only a part time
3 contract employee of the county—with additional jobs elsewhere to help cover expenses like
4 office overhead.

5 90. Defendants know that the public defender only requests experts and investigators
6 one or two times a year in Grays Harbor juvenile cases and that social workers are seldom
7 utilized. In contrast, the Prosecutor has experts readily available and frequently uses them,
8 because she can call the probation officers, detention officers, school officials, treatment
9 providers, and others as witnesses. Because the public defender regularly fails to present
10 witnesses aside from the Defendant and family members, the Prosecutor's witnesses are treated
11 like experts.

12 91. As a result of these systemic deficiencies, children in the Grays Harbor juvenile
13 justice system suffer serious harm. Their cases receive inadequate time and attention from their
14 public defenders and they are expected to plead guilty or otherwise go along with the results
15 predetermined by the juvenile court judge and prosecutor.

16 92. Despite knowledge of these specific injuries, Defendants have failed to take any
17 actions to ensure parity for juvenile public defenders in the Grays Harbor system or to ensure
18 that the public defenders there are treated as equal partners.

19 **f. Continuing Legal Education**

20 93. Defendants are well aware of the importance of continuing legal education for
21 public defenders and, indeed, provide a number of high quality trainings every year. However,
22 even where—as here—Defendants know a particular public defender is in dire need of specific
23 continuing legal education, Defendants do not ensure that those public defenders actually attend
24 the necessary trainings and have no supervisory plan in place to ensure that future juvenile
25 defenders in Grays Harbor County attend similar such trainings.

26 94. Defendants have not taken enforcement action to ensure that juvenile public
27 defenders in Grays Harbor County are actually equipped with the training and expertise needed

1 to represent these vulnerable clients. Defendants do not, for example, review juvenile defender
2 qualifications, experience levels, or continuing legal education certifications. Neither do they
3 require that Grays Harbor County do so. As noted above, national and local standards make clear
4 that children in particular have challenging legal needs, demonstrating the importance of
5 adequate training specific to developments in the law and science regarding juveniles. Failure to
6 comply with these standards contributes to the constitutional violations occurring in the Grays
7 Harbor County juvenile public defense system.

8 95. As a result of Defendants' failure to ensure compliance with this standard,
9 juvenile public defenders in Grays Harbor County can simply choose not to attend essential
10 trainings and consequently lack the substantive knowledge and ability required to provide
11 constitutionally adequate representation. Available defenses go unraised, inappropriate guilty
12 pleas are entered, and children are denied beneficial services to which they would otherwise be
13 entitled.

14 96. Their clients suffer grave harm as a result. In dozens of cases spanning several
15 years, children charged with offenses in Grays Harbor County Juvenile Court are ordered
16 detained while awaiting trial, with bail routinely set at \$5,000, in violation of applicable
17 constitutional, statutory, and court rule requirements, with no challenge to the bail amounts filed
18 by the public defender.

19 97. In one case, the Grays Harbor County juvenile court public defender was
20 observed informing the court that the juvenile client wanted to plead guilty as charged to an
21 assault, but when the juvenile was asked what they did, it was clear that there was a self-defense
22 issue. The public defender failed to raise the defense and the juvenile eventually entered a guilty
23 plea.

24 98. At a revocation of Special Sex Offender Disposition Alternative hearing, the court
25 raised a question of law about whether a juvenile defendant could be sent to a residential
26 treatment facility in another state as an alternative to being sent to the state juvenile prison
27 system. The public defender made no investigation into the law that would allow the court to

1 enter such an order, resulting in denial to the juvenile of potentially beneficial and rehabilitative
2 services.

3 **g. Supervision and Review**

4 99. Defendants are well aware that there is no meaningful supervision or review of
5 juvenile public defense counsel in Grays Harbor County.

6 100. Defendants know that as a result of the failure to provide meaningful supervision
7 or oversight, the contracts of public defenders are routinely renewed even in the face of stark
8 evidence of their failure to provide even the most minimally adequate defense services. For
9 example, the County renewed the contract of former public defender Imler from at least 2008 to
10 2016 without any intervention by Defendants despite grave concerns held by OPD staff about
11 Imler's ability and/or willingness to provide adequate representation to his juvenile clients.

12 101. Despite this knowledge, Defendants have failed to ensure that defense counsel in
13 the Grays Harbor juvenile system are appropriately supervised and systematically reviewed to
14 ensure compliance with national and local standards, have failed to require Grays Harbor to
15 engage in such supervision and review, and have not engaged in any direct supervision or review
16 themselves.

17 102. As a direct result, juvenile defendants in Grays Harbor suffer serious harm. They
18 are routinely pressured by their public defenders to plead guilty, and they receive representation
19 from defenders who have not conducted even the most basic investigation into the facts of their
20 cases and who do not perform even the most basic aspects of motion practice or litigation.

21 103. Defendant OPD has long known that the Grays Harbor County juvenile public
22 defense system routinely subjects juveniles to a "meet and plead" system. The documents
23 Defendant OPD receives in connection with grant applications, as well as court files and
24 proceedings in court, demonstrate that the regular practice in Grays Harbor County juvenile court
25 is for children to plead guilty, often to the same offense charged, within a few weeks of
26 arraignment.

1 104. Given the short amount of time between charge and plea, there is no opportunity
2 for the public defender to investigate exonerating or mitigating facts of the case, or facts about
3 the child's background, which are relevant to legal defenses and the appropriate disposition of
4 the case. Nor are there any documents such as time records, motions, requests for investigative or
5 expert services, or dispositional memoranda showing compliance with the standards.

6 105. Motions and trials are infrequent and the public defender rarely makes objections
7 or presents evidence or testimony on behalf of the defense. Juveniles are routinely subjected to
8 lengthy pretrial and post-sentencing incarceration. Defenders routinely agree to deferred
9 dispositions or regular sentences that require lengthy court supervision and compliance with a
10 long list of onerous conditions that are near-impossible for most juveniles to meet, resulting in
11 years of a repeated cycle of further incarceration, disrupting their education, family life, and
12 future.

13 **C. Defendants are Well-Equipped and Capable of Enforcing Compliance with**
14 **the Standards**

15 106. The state agency officially charged with the duty to "implement the constitutional
16 and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent
17 defense services funded by the state of Washington" is Defendant OPD. RCW 2.70.005.

18 107. OPD was established "[i]n order to implement the constitutional and statutory
19 guarantees of counsel and to ensure effective and efficient delivery of indigent defense services
20 funded by the state of Washington." RCW 2.70.005.

21 108. Defendant OPD is required to "[a]dminister all state-funded services in . . . trial
22 court criminal indigent defense, as provided in chapter 10.101 RCW." This includes the
23 provision of public defense services to accused juvenile offenders. *See, e.g.*, RCW 13.50.010.

24 109. In carrying out its duty to implement the constitutional right to counsel,
25 Defendant OPD operates state-wide programs and provides funding to cities and counties to
26 improve the delivery of public defense services. The funding and oversight provided by
27 Defendant OPD extends to juvenile defendants and proceedings in juvenile courts. RCW

1 10.101.050 (OPD “shall disburse appropriated funds to counties and cities . . . [to] improve the
2 quality of services for both juveniles and adults.”). Additionally, all juvenile courts are required
3 to provide Defendant OPD with records needed to implement the agency’s oversight, technical
4 assistance, and other functions. RCW 2.70.020, 13.50.010(13).

5 110. Defendant OPD is authorized to designate funds to eligible counties that meet
6 minimal standards, and counties receiving funds must document to Defendant OPD that they are
7 “meeting the standards for provision of indigent defense services as endorsed by the Washington
8 state bar association or that the funds . . . have been used to make appreciable demonstrable
9 improvements in the delivery of public defense services.” RCW 10.101.050; RCW 10.101.060.

10 111. Defendant OPD is the entity responsible for determining eligibility of counties to
11 receive state funds for public defense, and “[i]f a determination is made that a county or city
12 receiving state funds . . . did not substantially comply with this section, the office of public
13 defense shall notify the county or city of the failure to comply and unless the county or city
14 contacts the office of public defense and substantially corrects the deficiencies within [a
15 specified period of time], the county’s . . . eligibility to continue receiving funds under this
16 chapter is terminated.”

17 112. Public defenders must attend yearly trainings in order for the county to receive
18 Defendant OPD funding, and the county must report expenditures for all public defense services,
19 attorney caseloads, and copies of each current public defense services. Individuals that contract
20 to perform public defense services must report to the county hours billed for nonpublic defense
21 legal services as well.

22 113. Defendant OPD has been active for years in working to adopt public defense
23 standards in Washington and support local governments in complying with those standards. It is
24 also currently involved in the WSBA Council on Public Defense (“CPD”)’s effort to adopt
25 updated juvenile public defender standards.

26 114. Defendant OPD regularly administers pilot programs, offers CLEs and technical
27 assistance to public defenders, and has staff with the expertise necessary to enforce the standards.

1 Defendant OPD is also well aware of the need for additional training and supervision of juvenile
2 public defense services in particular. For example, it recently applied for a grant from the
3 U.S. Department of Justice that would have funded the creation of voluntary pooled defense
4 services in certain counties—for which Defendant OPD would have directly administered the
5 contracts. It has received a grant from the federal OJJDP to “eliminate justice by geography” as
6 to the juvenile public defense system in Washington, and has a strategic plan for doing so.
7 http://www.opd.wa.gov/documents/0409-2016_JuvenileDefenseStrategicPlan.pdf. For example,
8 it is operating a Juvenile Defense Training Academy starting April 29, 2017.
9 http://www.opd.wa.gov/documents/00425-2017_JuvenileTrainingAcademy.pdf

10 115. Defendant OPD has general knowledge of which jurisdictions in the state—
11 including Grays Harbor County—routinely provide constitutionally inadequate services, and it
12 has the expertise to fix the problems in those jurisdictions. For example, Defendant OPD has run
13 pilot projects that were effective in bringing constitutional and high quality public defense to
14 various jurisdictions. In 2006, it ran a pilot project for the Grant County juvenile public defense
15 system, by providing additional attorneys and other support, and requiring compliance with the
16 Ten Core Principles for Providing Quality Delinquency Representation through Public Defense
17 Delivery Systems by NJDC and NLADA. Defendant OPD’s pilot project resulted in improved
18 communication with clients, improved motions, increased diversions, fewer cases and less
19 serious charges filed by the prosecutor, and a lower conviction rate, among other improvements.

20 116. But, to date, OPD has not exercised authority to compel jurisdictions to change
21 their ways—even where, as here, it has long been aware that the services being provided are
22 constitutionally deficient.

23 117. Although many counties in Washington State provide constitutionally adequate—
24 or superior—public defense services, Defendants have failed to ensure that all counties meet at
25 least the constitutional floor. Each of Washington’s 39 counties operates its own public defense
26 system. Defendants current system enables counties (like Grays Harbor) to provide woefully
27

1 deficient services to one of the most vulnerable populations in the state while other counties
2 provide stellar services.

3 118. Although there has been litigation challenging unconstitutional systems at the
4 local level in Washington, and there has been progress in adoption of statewide public defense
5 standards with help from Defendant OPD, the current regime permits systems with the worst
6 constitutional violations—like Grays Harbor County—to violate the right to counsel with
7 impunity.

8 **COUNT I**

9 **VIOLATION OF THE RIGHT TO COUNSEL UNDER THE SIXTH AND**
10 **FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION**

11 119. The Sixth and Fourteenth Amendments to the U.S. Constitution require the State
12 to provide adequate legal representation to Plaintiffs in juvenile offender proceedings. Based on
13 the allegations above, Defendants know that the Grays Harbor County public defense system for
14 juveniles accused of offenses fails to comply with the Constitution and they have failed to
15 exercise their authority to remedy those violations.

16 120. Therefore, Defendants have violated and caused violations of the Class Plaintiffs'
17 rights to the assistance of counsel pursuant to the Sixth and Fourteenth Amendments.

18 121. These constitutional violations provide Plaintiffs with the right to obtain
19 declaratory relief pursuant to the Declaratory Judgment Act (Chapter 7.24 RCW).

20 **COUNT II**

21 **VIOLATION OF THE RIGHT TO COUNSEL UNDER THE STATE CONSTITUTION**

22 122. Wash. Const. Art. 1, sections 3 and 22 and RCW 13.40.140 recognize juveniles'
23 right to counsel in juvenile offender proceedings. Defendants know that the Grays Harbor
24 County juvenile public defense system has been violating these rights for years and they have
25 failed to exercise their authority to remedy those violations.

1 E. Declare that Defendants possess the competence, expertise, and authority to
2 decide how to redress constitutional inadequacies in the public defense systems of the various
3 counties of Washington State;

4 F. Declare that the existing juvenile public defense system in Grays Harbor County
5 is constitutionally deficient and that Defendants must take corrective action to address the
6 deficiencies there; and

7 G. Grant such other relief as the Court deems appropriate.

8
9
10 DATED: May 12, 2017

By: 

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1 DECLARATION OF SERVICE

2 I hereby declare that on this 12th day of May, 2017, I caused a copy of the foregoing to
3 be:

4 electronically filed with the Clerk of the Court using the Thurston County
E-Filing system.

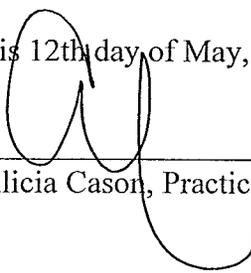
5 e-mailed and mailed via U.S. Mail to the following:

6 Eric A. Mentzer
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9 P.O. Box 40126
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10 Jeffrey T. Even
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13
14 I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

15 EXECUTED at Seattle, Washington this 12th day of May, 2017.

16
17 
18 _____
Alicia Cason, Practice Assistant

3
FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2017 NOV -9 PM 2:22

THE HONORABLE CHRISTOPHER LANESE

Linda Myhre Enlow
Thurston County Clerk

17-2-01968-34
OR 62
Order
2066023



IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

EX PARTE

COLLEEN DAVISON, legal guardian for K.B.,
a minor, on behalf of themselves and others
similarly situated and GARY MURRELL,

Plaintiffs,

v.

STATE OF WASHINGTON and
WASHINGTON STATE OFFICE OF PUBLIC
DEFENSE,

Defendants.

Case No.: 17-2-01968-34

STIPULATION AND [PROPOSED]
ORDER CERTIFYING CLASS

Clerk's Action Required

I. STIPULATION

The parties, by and through their counsel of record, stipulate to the certification of a class pursuant to CR 23 (b)(2), described as follows:

All indigent persons who have or will have juvenile offender cases pending in pretrial status in Grays Harbor County Juvenile Court, and who have the constitutional right to appointment of counsel.

This Stipulation does not deprive the parties of their right to later seek a new class definition, nor does it deprive the Court of its discretion to redefine the class as necessary and appropriate.

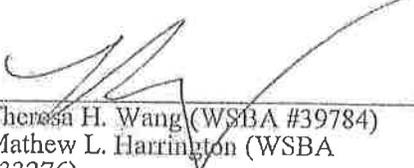
STIPULATION AND [PROPOSED] ORDER CERTIFYING CLASS - 1
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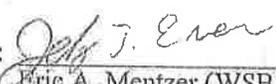
1 DATED this 5th day of October, 2017.

2
3 STOKES LAWRENCE, P.S.

OFFICE OF THE ATTORNEY GENERAL

4
5 By: 

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7 Mathew L. Harrington (WSBA
#33276)
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By: 

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9 ACLU OF WASHINGTON FOUNDATION

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11 Nancy L. Talner (WSBA #11196)
12 Breanne Schuster (WSBA #49993)

Attorneys for Plaintiffs

13 **II. ORDER**

14 Based on the foregoing stipulation made by the parties herein, the Court certifies the
15 following class pursuant to CR 23(b)(2):

16 All indigent persons who have or will have juvenile offender cases
17 pending in pretrial status in Grays Harbor County Juvenile Court
18 since April 3, 2017, and who have the constitutional right to
appointment of counsel.

19 IT IS HEREBY ORDERED that Stokes Lawrence P.S. and the ACLU of Washington
20 Foundation are deemed Class counsel for the class certified above.

21
22 DATED this 7th day of November, 2017.

23
24
25 
26 THE HONORABLE CHRISTOPHER LANESE

CHRISTOPHER LANESE

STIPULATION AND [PROPOSED] ORDER CERTIFYING CLASS - 2
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Presented by:
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Superior Court Case Number: 17-2-01968-0

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