

## PUBLIC DEFENSE

“(Public) defense shortcomings are the ‘elephant in the room’ to the justice imperative - if defense breaks down, the whole justice system breaks down.”  
- Report of the Washington State Bar Association (WSBA) Blue Ribbon Panel on Criminal Defense, May 15, 2004

**The crisis:** Before 2005, Washington State paid nothing toward indigent criminal defense except for appeals, leaving budget-strapped counties to handle the cost on their own. No mandated public defense standards existed; many public defenders had caseloads of over 500 cases in a year, far in excess of recommended caseload limits; little or no training was provided for new public defenders; and counties struggled to create public defense systems and contracts they could afford.

Public defenders were quitting in frustration; newspapers and task forces were beginning to examine and enumerate the failings of Washington’s public defense system; and the American Civil Liberties Union filed a lawsuit in one county over the inadequacy of its defense system.

“The quality of public defense services in Washington varies greatly. Some defender organizations are among the best in the nation... At the same time...defendants in some Washington jurisdictions are poorly served, even victimized, by those entrusted with protecting their civil rights,” said the WSBA Blue Ribbon Panel on Criminal Defense. Inadequate public defense leads to injustice and wrongful convictions, expensive appeals and reversals, civil rights lawsuits, and loss of respect for the courts, the panel concluded.

- **\$2.3 million** for indigent criminal defense, including \$1.3 million to increase training and technical assistance to jurisdictions, and \$1 million for a public defense demonstration project;
- **Approximately \$1.6 million** for county law libraries;
- **\$200,000** for the Access to Justice Board. State lawmakers continued to support the Justice in Jeopardy effort in the 2006 interim budget year, approving an additional \$8.6 million for the following:

**Steps taken:** In 2005 and 2006, state lawmakers allocated \$5.3 million for public defense services, including funds for technical support of counties creating contracts for public defense, training of new defenders, and funds for counties that commit to working on improving their public defense systems. This was the first time in state history that state legislators allocated funds for trial-level public defense. The Office of Public Defense (OPD) hired staff members and established programs to train and support jurisdictions and attorneys, and to work with jurisdictions wanting to improve their systems. Lawmakers also provided \$9.5 million for improved representation of parents in court actions and hearings to determine how and whether they can retain custody of their children. Studies showed that improved representation significantly reduces the time frame for such dependency processes and increases parents’ ability to access services and reunite with their children. OPD’s parent’s representation program was expanded from three counties to 17 counties.

**The road ahead:** The WSBA Blue Ribbon Panel on Criminal Defense recommends that the state work toward paying 50 percent of the cost of public defense across the state, while counties work toward improving their systems and adopting minimum caseloads and other standards. In order to achieve adopted defense standards, in its 2004 report, the Court Funding Task Force estimated the unmet needs in indigent defense to be about \$130 million per year. The Office of Public Defense is working toward expanding the successful parent’s representation program to all counties in the state.

- **\$4.5 million** to expand the Office of Public Defense’s successful parent’s representation program to 18 counties;
- **\$3 million** for indigent criminal defense, to be distributed to counties that commit to working on meeting public defense standards;
- **\$600,000** to the Office of Civil Legal Aid to support emergency civil representation of domestic violence victims throughout the state; and

## CIVIL LEGAL AID

“The findings are very troubling and have significant implications for our state’s justice system. Many thousands of our state’s most vulnerable residents have serious legal problems and cannot get any help in resolving them.” - Washington State Civil Legal Needs Study, September, 2003

**The crisis:** A groundbreaking study on the civil legal needs of Washington’s low-income residents found that they have about one million legal problems each year, mostly involving basic human needs such as housing, employment, health care and family safety. Of those, only about 15 percent of residents were receiving any kind of legal aid. For instance, one elderly woman injured herself and could not walk the stairs in her apartment complex, but the landlord would not fix the elevator. She spent months without ever leaving her apartment, once making it to a doctor appointment only because her sons carried her down the stairs. Legal aid could have helped her work through the courts to ensure the landlord met housing requirements. The study found that women and children were most strongly affected by unmet civil legal needs, and that populations such as the elderly and disabled were more vulnerable than others. Legal aid funding from the federal and state governments had been under budget attack for years. In 1980, Washington had 140 legal aid attorneys for approximately 500,000 low-income residents. By 2005, the state had just over 100 legal aid attorneys for a low-income population of approximately 1.1 million.

- **\$569,000** for a pilot project to increase juror pay in three pilot sites and study the pay increase’s effect on juror participation. Juror pay statewide remains at the \$10 per day level set in 1959.

Since 2005, trial courts and justice agencies have been putting the new funding to good use. Task Force members, judges and members of the court system across the state expressed sincere appreciation to legislators for their support, adding that they are determined to continue working toward full implementation of the Task Force’s recommendations.

**Steps taken:** State lawmakers in 2005 and 2006 allocated \$3.6 million toward civil legal aid services, which halted another drastic cut in legal aid attorneys that would have taken place in 2005. They created the new Office of Civil Legal Aid (OCLA) and the Civil Legal Aid Oversight Committee, the first state entities established to watch over the provision of state-funded civil legal aid in Washington. OCLA’s job is to contract with qualified legal aid providers for the efficient and effective delivery of civil legal aid services in areas authorized by the Legislature; to oversee and ensure accountability of state-funded legal aid providers; to develop and submit biennial budgets designed to close the legal aid funding gap; and to report biennially to legislators, the Supreme Court and the Supreme Court’s Access to Justice Board on gaps and needed services. Most importantly, state lawmakers in their language agreed that civil legal aid is an important component of the justice system, rather than a charitable service provided to low-income residents.

**The road ahead:** Despite recent gains, biennial funding for civil legal aid still falls \$33 million short of the level necessary to address the needs chronicled in the landmark 2003 Civil Legal Needs Study. One gaping hole in services is the lack of any meaningful legal aid services in rural areas. Other challenges for legal aid attorneys include the increasing number of immigrants and legal problems complicated by cultural and language differences. The effort to secure sufficient funding for civil legal aid will be an ongoing effort.

“In many ways, our work is just beginning,” said Court Funding Task Force Chairman M. Wayne Blair, former president of the Washington State Bar Association, and now vice-chair of the Implementation Committee.

“We found that the lack of adequate, stable funding places our system of justice in jeopardy, and undermines the public’s trust and confidence in the courts,” he said. “Equal justice is not simply a goal to strive for; rather it is the basic foundation of a just and democratic society.” ■

# JUSTICE IN JEOPARDY

## FUNDING SYSTEM ESTABLISHED IN 1889 NO LONGER ENSURES JUSTICE FOR WASHINGTON RESIDENTS

“If we do not maintain justice, justice will not maintain us.”

- Sir Francis Bacon

The words of Sir Francis Bacon go to the very heart of our democracy, of the reason we possess pride in our nation and system of government. We revere justice and maintaining a strong, fair system is of highest concern to Americans.

However, it is a stark reality that many Washington citizens are not served by justice because we have not maintained our system of funding it. Established at statehood in 1889, our funding structures rely almost entirely on local governments and have remained static while the world has changed around them.

*A 15-year-old boy was removed from his home by police after an alleged assault at home. He was placed in custody and then foster care, where he languished due to lack of resources for juveniles, a custody battle between his parents, and repeated continuances caused by lack of courtrooms. His case was finally tried almost two years later in 2003, two months before his 18th birthday. He is now estranged from his mother and siblings. Delay caused by lack of court resources halted this family’s chance at a resolution while the boy was still maturing.*

- Pierce County Superior Court Judge

The Washington State Constitution promises residents, in Article I, Section X, that, “Justice in all cases shall be administered openly, and without unnecessary delay.” But delay and serious consequences happen because of crowded court calendars, lack of court interpreters, defense attorneys with excessive caseloads, unequal representation in family proceedings, and Washington residents struggling through serious civil legal problems on their own because they cannot afford legal aid.



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Today, budget-strapped local governments bear more than 80 percent of the costs of our courts. State government funds the rest - which means less than one percent of the state budget goes to maintain justice and to fulfill the constitutional promise of equal justice without unnecessary delay.

Important steps were taken by state legislators in 2005 and 2006 to begin repairing the foundation of Washington's justice system; however, a long road lay ahead as court officials, community groups and state lawmakers continue to work on problems that have taken decades to develop.

As the consequences of inadequate and unequal justice, funding grew more serious across Washington, the statewide Court Funding Task Force was created in 2002 to study the specific areas in which Washington's justice system was beginning to fail, and to quantify what was needed to halt the downward spiral and repair the system.

*“After days of wrenching testimony in a Yakima court, a man was convicted of assaulting his 11-year-old son in front of a younger brother. He appealed, but because the court’s recording equipment had failed, the appeal forced a re-trial. The expense would be enormous and the children and mother could not face another trial, so the prosecutor was forced to strike a weak plea agreement.”*

*- Former Prosecutor, Yakima County*

The Task Force, formed by the Board for Judicial Administration (BJA), included members from across the state and from all backgrounds - judges, attorneys, legislators, local government officials, citizens, business persons, and more.

The effort became known as the “Justice in Jeopardy” campaign. The Task Force’s recommendations were endorsed across the political spectrum by businesses, community organizations, local governments and the media.

For instance, the editorial board of the Seattle Post-Intelligencer wrote on January 23, 2005:

*“We are short changing justice in Washington State, and any one of us could pay a terrible price... With the exception of the constitutionally*

*“Therefore, the Legislature intends to create a dedicated revenue source for the purposes of meeting the state’s commitment to improving the trial courts in the state, providing adequate representation to criminal indigent defendants, providing for civil legal services for indigent persons, and ensuring equal justice for all citizens of the state.”*

*- 2ESSB 5454, signed into Washington State law on May 13, 2005*

*mandated ‘paramount duty’ to provide for public education, there is no function closer to the core of government or of greater priority for government than the assurance of justice to its citizens.”*

Task Force members took their message to state legislators in 2005 and lawmakers listened. Washington State lawmakers in 2005 and 2006 appropriated an additional \$42.1 million per biennium for trial courts, public defense and civil legal aid, as well as some relief for burdened county budgets. More importantly, lawmakers agreed that the state has a duty to become more of a partner with local governments in funding the state court system.

“This legislation is an important first step in achieving adequate and stable long-term funding for our state’s trial courts,” said Washington Supreme Court Chief Justice Gerry Alexander. “As important as the financial commitments are, we are even more encouraged by the policy statement in which the state recognizes its responsibility to partner with local government in funding our justice system.”

*In 2002, a man convicted of attempted rape in Pierce County walked out of prison after serving only four years of a 10-year sentence. Crowded court calendars had delayed his trial one week past the speedy-trial deadline set by law. Pierce County courts were jammed with about 6,000 felonies a year in addition to civil cases, and judges were hearing about 70 cases a day.*

*- News reports on speedy trial violations*

The Court Funding Task Force and other studies over the years have recommended that eventually, for stable and balanced court funding, the state pay 50 percent of the cost of trial court operations and indigent criminal defense, and assume a substantially greater role in funding civil legal aid services for Washington's low-income residents.

## TRIAL COURT IMPROVEMENT ACCOUNTS

In 2005, state legislators adopted the Court Funding Task Force’s recommendation to create Trial Court Improvement Accounts in each jurisdiction equal to the new state funds being paid for elected district and elected municipal court judges’ salaries.

Though the money was just beginning to flow in by mid-2006, some jurisdictions across the state listed their plans for the initial funds:

- **Adams County:** Installation of digital recording systems and assistive listening devices in two courtrooms, and a new sound system in another courtroom.

- **Benton County:** Upgrade of the recording system in district courtrooms and purchase of office equipment to increase efficiencies.

- **Clallam County:** Creation of a courthouse security officer position.

- **Cowlitz County:** Purchase of software that allows for creating and signing forms electronically.

- **City of Everett:** Installation of new video arraignment equipment connecting the Everett Municipal Court to the Snohomish County Jail.

“We recognized that this would require a long-term, incremental approach, and that we have a long road ahead,” Alexander said. “The more we reflect on the Task Force recommendations, the more firmly convinced we are that we have developed the best approach in the nation, that a shared responsibility between state and local government is imperative.”

**Before 2005, Washington State funded only about 15 percent of the cost of the trial court system - spending less than half of one percent of the state budget on courts - the lowest percentage of all states in the United States**

Court funding in Washington has been a train wreck in the making for decades - partly because funding systems were set up in the first years of Washington’s existence to rely heavily on local governments - and court officials acknowledge that repairing that foundation will not happen in a legislative session or two.

- **Ferry County:** Upgrade of a remote video appearance system.

- **Kitsap County:** Partial funding of new district court judge position and associated staff.

- **Klickitat County:** Funding part of a new probation officer position to assist drug court.

- **Lewis County:** Partial funding of new assistant court administrator for district court.

- **Lincoln County:** Purchase of a new digital audio recording system in district court.

- **Okanogan County:** Purchase of imaging software interface to link imaged documents to docket entries on district court docket.

- **Pacific County:** Increase in part-time district court judge position.

- **Pierce County:** Assist with funding an additional judge position.

- **Yakima County:** Operating expenses of new district court satellite facility in Grandview serving southeastern region of county.

The problem reached true crisis level in the early 2000’s as counties struggled with their individual budgets. At that time, the serious disparity in county budgets around the state showed clearly how vulnerable court funding was to local budget problems, and revealed how unequally justice could be administered between counties.

Courts in some counties were beginning to close for certain times during the weekdays, probation oversight of released felons was being cut or eliminated, crowded court calendars were forcing prisoners to be released because of violation of speedy trial deadlines, and some civil trials had to wait for more than a year to be heard. Public defenders in some counties were carrying caseloads several times the recommended limits, and Washington’s low-income residents often failed to find help with serious civil legal problems, depending on where they lived.

*“Washington judges will steadfastly continue their efforts to ensure the promise of equal justice for all Washington citizens. In large part, the cornerstone of this commitment rests upon adequate and stable funding for the trial courts and we pledge to stay the course in achieving this long-term goal. The action of legislative leaders and the Governor in 2005 represents an important first step in the right direction for Washington’s courts. We are deeply grateful for your support.”*

*- Washington Supreme Court Chief Justice Gerry Alexander in January 2006 letter to Governor Christine Gregoire and state legislative leaders.*

“Our trial judges have obviously known of the problems they face in their own jurisdictions, but the scope of the problem statewide was not fully catalogued,” Chief Justice Alexander told legislators in his 2005 State of the Judiciary address.

*John W. “Cabbie” Jackson was convicted of a drug charge in Grant County despite the fact that the primary witness against him was mentally ill, and the only other witness testified to a view of the crime that was physically impossible. He served the entire five-year sentence before his conviction was reversed. He died one year after leaving prison.*

*- Seattle Times report on indigent defense*

The Task Force’s recommendations were focused on three critical areas - trial court operations, indigent criminal defense, and civil legal aid.

**Among its recommendations for trial court operations:** That the state assume 50 percent of the cost of jury fees and mileage; that the state adopt the Jury Commission recommendation of \$10 for the first day of jury duty and higher reimbursement on subsequent days; that the state assume 50 percent of the cost of district court judge’s and elected municipal court judge’s salaries; and that Trial Court Improvement Accounts be established in each jurisdiction with savings realized from the state paying half of judges’ salaries and jury fees.

**Among its recommendations for indigent criminal defense:** That the state pay 100 percent of the cost of representing parents in dependency hearings; that an extended training

program be created for new public defense attorneys; that new positions be created within the Washington State Office of Public Defense to provide technical support to jurisdictions on public defense contracts and services; and the state provide direct fiscal support to local jurisdictions for increased public defense services and to halt impending service cuts.

**Among its recommendations for civil legal aid:** That the state make a significant and meaningful increase in civil legal aid funding, with the objective of closing the \$36 million biennial funding gap chronicled by the Supreme Court’s Task Force on Civil Equal Justice Funding; that the administration and oversight of civil legal aid funding be shifted to the judicial branch in an Office of Civil Legal Aid; and that the capacity of the Northwest Justice Project and other state-funded legal aid providers to respond to critical legal needs of seniors, domestic violence victims, developmentally disabled and other low-income people be expanded.

The 2005 Washington Legislature responded to recommendations by approving 2ESSB 5454, which agreed that the state has a responsibility to pay a higher portion of the costs of the state justice system. The bill raised court user fees, and gave approximately \$32.5 million per biennium to the courts and to counties and cities.

- **Approximately \$16.1 million** was allocated directly to county general funds to provide relief for their burdens in funding the court system;
- **Approximately \$2.1 million** to municipal general funds;
- **Approximately \$2.4 million** to pay a portion of district and municipal court judges’ salaries - municipal court judges must be elected to qualify - increasing to \$6.8 million in the 2007-2009 biennium;
- **Creation of Trial Court Improvement Accounts** by jurisdictions in amounts equal to the money they receive for judicial salaries, to be used to improve and enhance a range of trial court systems and operations;
- **\$5 million** to increase legal representation of indigent parents in dependency hearings;
- **\$3 million** for civil legal aid to the poor, to be funded through a newly established judicial branch agency – the Office of Civil Legal Aid;