

Felony Indigent Defense Workgroup

Work Session presented to the Clark County Council

Presented by workgroup members:

Hon. John Nichols (ret.)

Hon. Barbara Johnson (ret.)

Heather Carroll, Attorney

Therese Lavalley, Attorney

Ann Christian, General Services Department

April 25, 2018



Work Session Goal

The workgroup presents its work on the county's felony indigent defense system, including its conclusions and recommendations, and receives council feedback and guidance.



Agenda

- 1 The workgroup and its work
- 2 Conclusions
- 3 Recommendations (2018 & 2019/20)
- 4 Council feedback / guidance



The Workgroup - Purpose and Members

Short-term

- Review service provision for felony cases and recommend short-term solutions. Also, review the current [original] proposal for the addition of in-house attorneys.

Long-term

- Review and make recommendations for long-term improvements.

Members:

Honorable John Nichols, Superior Court judge (retired)

Honorable Barbara Johnson, Superior Court presiding judge (retired)

Karen Campbell, Senior Attorney, NW Justice Project

Mark Muenster, Attorney

Heather Carroll, Therese Lavalley, Tom Phelan, Felony Indigent Defense Contractors

Ann Christian & Angela Colaiuta, Indigent Defense office



The Workgroup - Meetings

❑ October 3, 2017 ~

Felony Contract Shortage for 2017 and 2018

Proposal for three county staff attorneys

❑ October 26, 2017 ~

Meeting with David Carroll (Sixth Amendment Center)

Felony compensation rates, including other counties

Indigent defense systems in other counties

Reasons for decrease in attorneys contracting with county



The Workgroup - Meetings

❑ December 14, 2017 ~

Detail on other county indigent defense systems
(structure, caseloads, staffing ratios & advisory boards)

Identify areas of possible consensus

Staff directed to prepare data:

Plan B (public defender office); and

Plan C (increased compensation for contractors)

❑ February 7, 2018 ~

Review of draft Plans B and C

Agreement on workgroup recommendations to the
County Council (for 2018 and 2019/20 biennium)



Supporting Information

- Historical Clark County System
- Historical Clark County Felony Compensation
- Other Washington Counties' Systems
- Local and State Standards and Guidelines
- National Guidance



Historical Clark County Indigent Defense Systems

1972 – 1980 **Non-profit public defender office with full-time attorneys and staff**

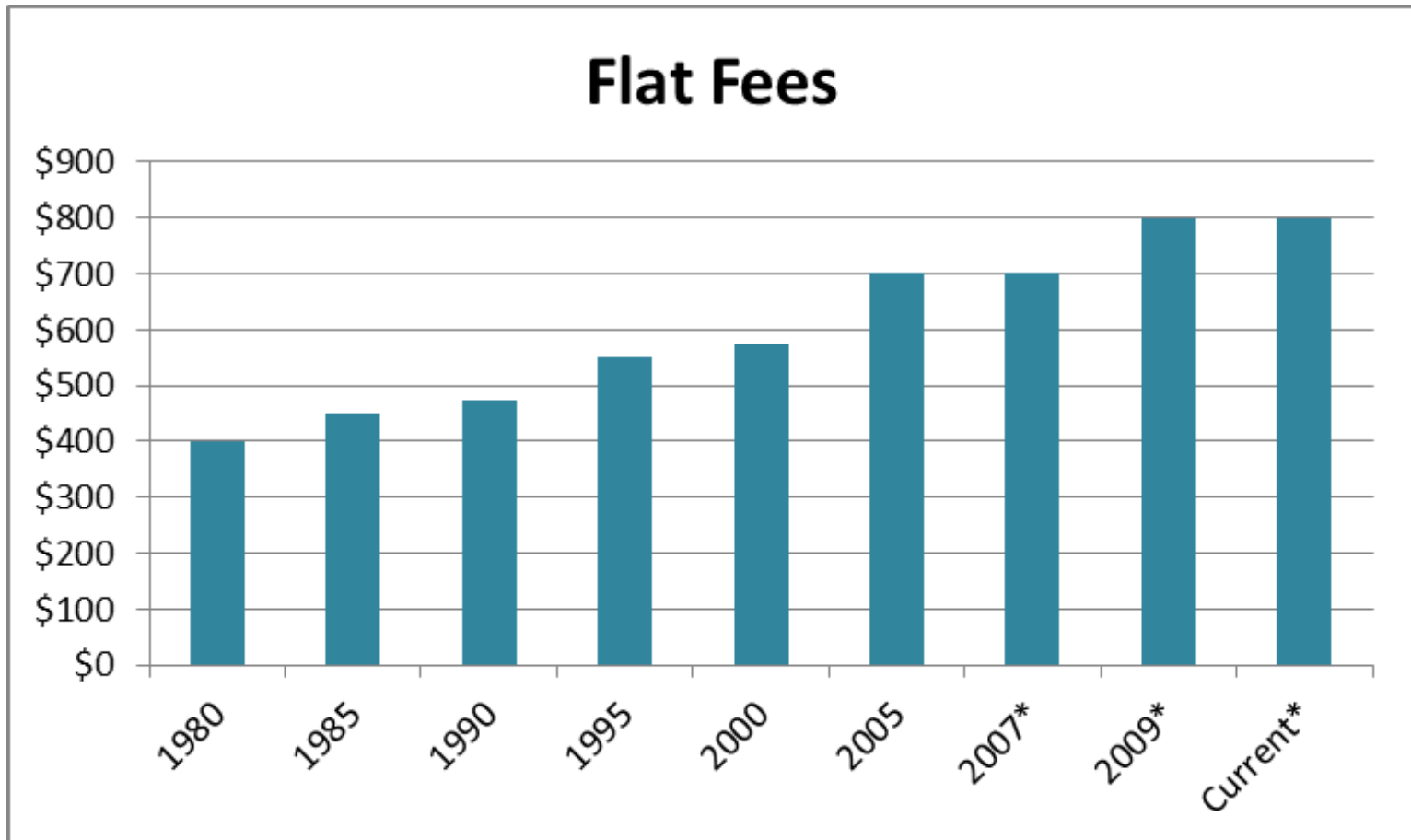
“The Prosecuting Attorney [Art Curtis], too, praised the quality of the original public defender office and has publically (sic) expressed his view that reestablishing a public defender system is in the best interests of the indigent defendants.” *Overview of the Clark County, Washington Indigent Defense System in 2002*, The Spangenberg Group, p. 38

1980 – current **Private attorney contractors, paid on a flat fee basis and limited to less than full-time**

“We were struck by the support for a public defender office we heard from a number of attorneys who were described to us as the best lawyers in the county. Many of these lawyers currently have contracts. Still, they told us, the right thing to do is to have a public defender office, even if it means losing their contract work. Frankly, if Clark County were to pay contract attorneys fees that are more reflective of current criminal practice and the cost of a law practice, it would quite likely be more costly than a public defender program.”
Spangenberg, p. 38.



Historical Felony Contract Compensation

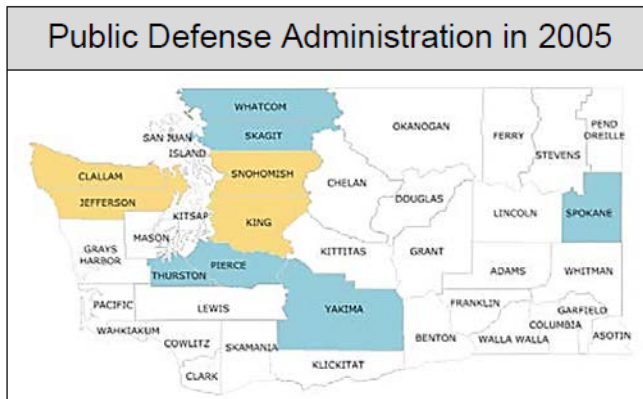


*“Additional Compensation” is paid for Class A and B felonies, up to \$1,450 for Class A sex offenses.

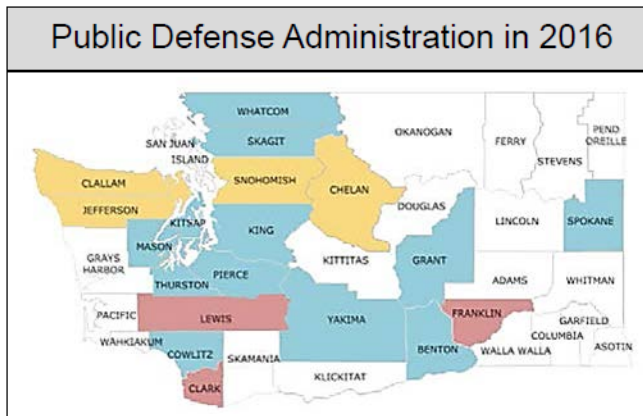
Contracts do not include homicide and persistent offender cases. These cases are paid on an hourly basis.



Other Washington Counties' Systems



- Public defender agencies** within county government structure
- Nonprofit agencies** organized exclusively for public defense services, contract with counties to represent indigent defendants
- Public defense coordinators** are county employees or contractors hired to provide varying degrees of oversight and accountability for public defense contracts with individual private attorneys or firms.
- Contract public defense systems**, also known as assigned counsel systems, are utilized in counties that enter into contracts with one or more private attorneys or firms to provide all indigent defense services



Graphics from Washington State Office of Public Defense: 2016 Status Report on Public Defense in Washington State (March 2017), p. 8

Type of Indigent Defense Program By County			
Type of Program	2005 # of Counties	2016 # of Counties	Net Change 2016/2005
Full-Time Staff ('Public Defenders') & Conflict Contracts/Attorneys	10	16	6
County Employees	6	12	6
Non-Profit Organization	4	4	0
Indigent Defense Coordinator	0	3	3
Contracts/Attorney Lists	29	20	-9



Felony Systems: Counties Over 100,000 Population

County	Population	Spending per capita	Total spending on PD	Felony filings
King	2,052,800	\$26.15	\$53,682,519.00	6,406
Pierce	830,120	\$20.30	\$16,849,240.00	5,245
Snohomish	757,600	\$10.16	\$7,693,785.00	2,813
Spokane	488,310	\$19.33	\$9,436,624.00	5,000
Clark	451,820	\$11.79	\$5,324,930.00	2,588
Thurston	267,410	\$16.33	\$4,366,580.00	1,888
Kitsap	258,200	\$11.91	\$3,074,587.00	1,535
Yakima	249,970	\$17.96	\$4,489,784.00	1,882
Whatcom	209,790	\$17.99	\$3,774,512.00	1,570
Benton	188,590	\$14.79	\$2,790,098.00	1,454
Skagit	120,620	\$34.64	\$4,178,835.00	1,125
Cowlitz	104,280	\$21.20	\$2,210,239.00	1,494

	PD Agency (county employee)
	Nonprofit PD
	Coordinator/100% Contracts

Source: Washington State Office of Public Defense: 2016 Status Report on Public Defense in Washington State (March 2017) (Contains Most Recent Data: 2015)



Clark County Comparison to All Counties

Clark County Rankings:

Population	5th HIGHEST	(King, Pierce, Snohomish, Spokane, Clark)
Felony Filings	5th HIGHEST	(King, Pierce, Spokane, Snohomish, Clark)
Misdemeanor Filings	6th HIGHEST	(Pierce, Snohomish, Benton, Spokane, King, Clark)
Juvenile Criminal	5th HIGHEST	(King, Snohomish, Pierce, Spokane, Clark)
Amount Spent Per Capita	6th LOWEST	(Whitman, Skamania, Island, Franklin, Snohomish, Clark)

Source: Washington State Office of Public Defense: 2016 Status Report on Public Defense in Washington State (March 2017) (Contains Most Recent Data: 2015)



Local and State Standards and Guidelines

Clark County Superior Court Indigent Defense Standards (2002)

Washington Supreme Court *Standards for Indigent Defense* (Originally adopted 10/1/2012)

Washington State Bar Association *Standards for Indigent Defense Services* (2011)

Washington State Bar Association *Performance Guidelines for Criminal Defense Representation* (2011)



National Guidance

American Bar Association (ABA) Ten Principles of a Public Defense Delivery System (2002); for example,

- *Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.*
- *Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.*
- *There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.*

David Carroll, Executive Director, Sixth Amendment Center (SAC) reviewed the indigent defense office's Original Proposal (mid-2017) and met with workgroup members and others in person. The SAC is a non-partisan, non-profit organization that "helps states and counties make their courts fair in ways that promote public safety and fiscal responsibility."



Workgroup Conclusions

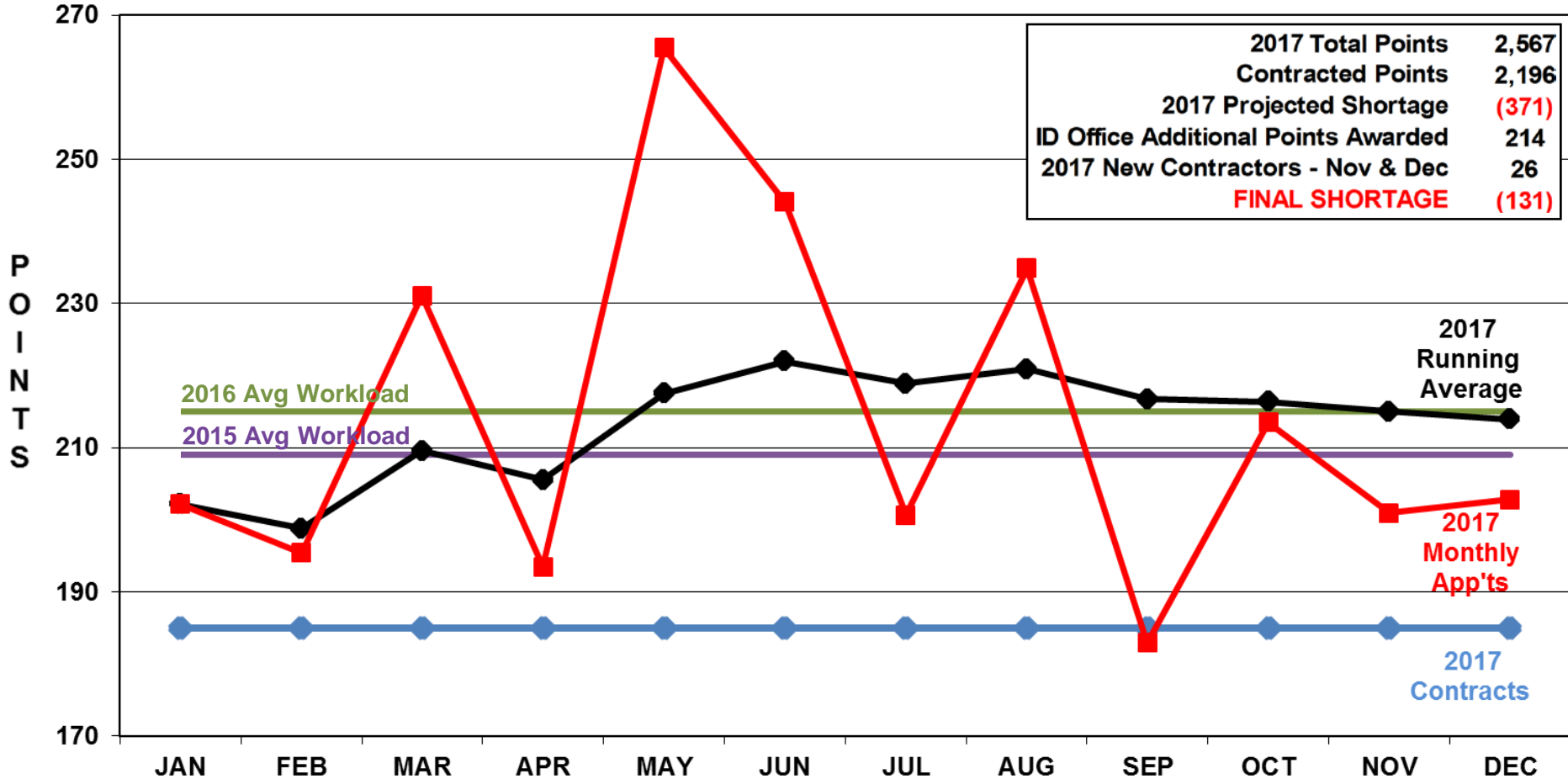
1. The absence of inflation-adjusted increases in compensation since 1/1/2009 adversely impacts the county's ability to attract new attorneys and retain others as felony contractors.
2. The 'graying' of contractors, student loan debt, increased difficulty of criminal defense practice, system impediments and other barriers adversely impact the 'pool' of applicants.
3. The number of contracts and case coverage for the 2017/18 biennium decreased significantly, due to retirements, non-renewal of contracts and fewer applications for contracts from 'new' attorneys.
4. A hybrid system consisting of a public defender (full-time attorney) office and independent contracts with private attorneys is a better model than the current 100% contract system.

Reasons:

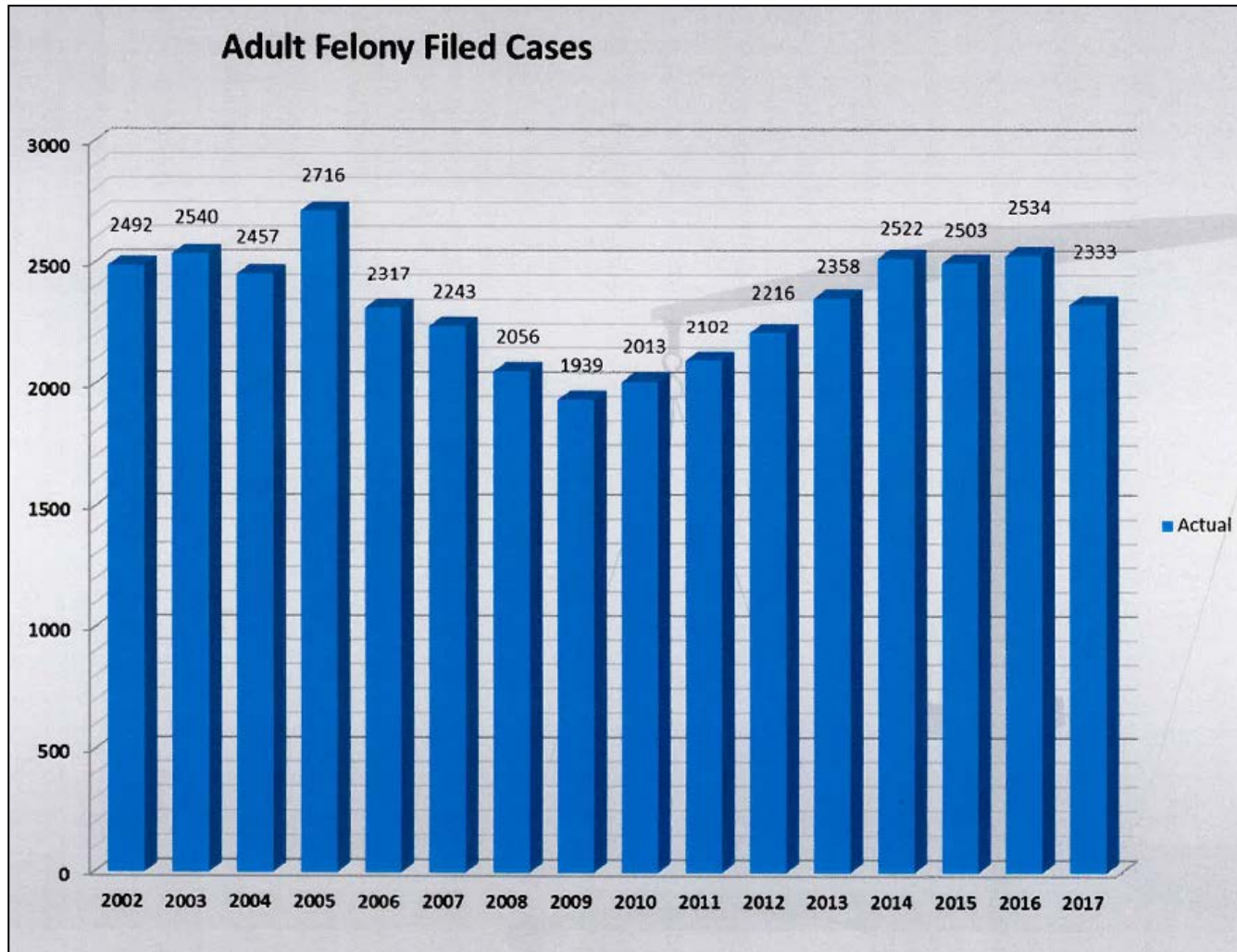
- a) Maintains adequate coverage
- b) Retains experienced attorneys
- c) Ensures adequate supervision and quality of representation mandated



2017 Felony Contracts & Workload



Prosecuting Attorney Felony Filings (2017)



Workgroup Recommendation for 2018

For 2017, existing felony contractors and two new contractors accepted cases that exceeded contracts by 345 points (3.5 times the usual excess workload).

The workgroup recommends the indigent defense office continue to seek new contractors and request contractors exceed their contracts again for 2018. No change to system.



Workgroup Recommendation for 2019/20

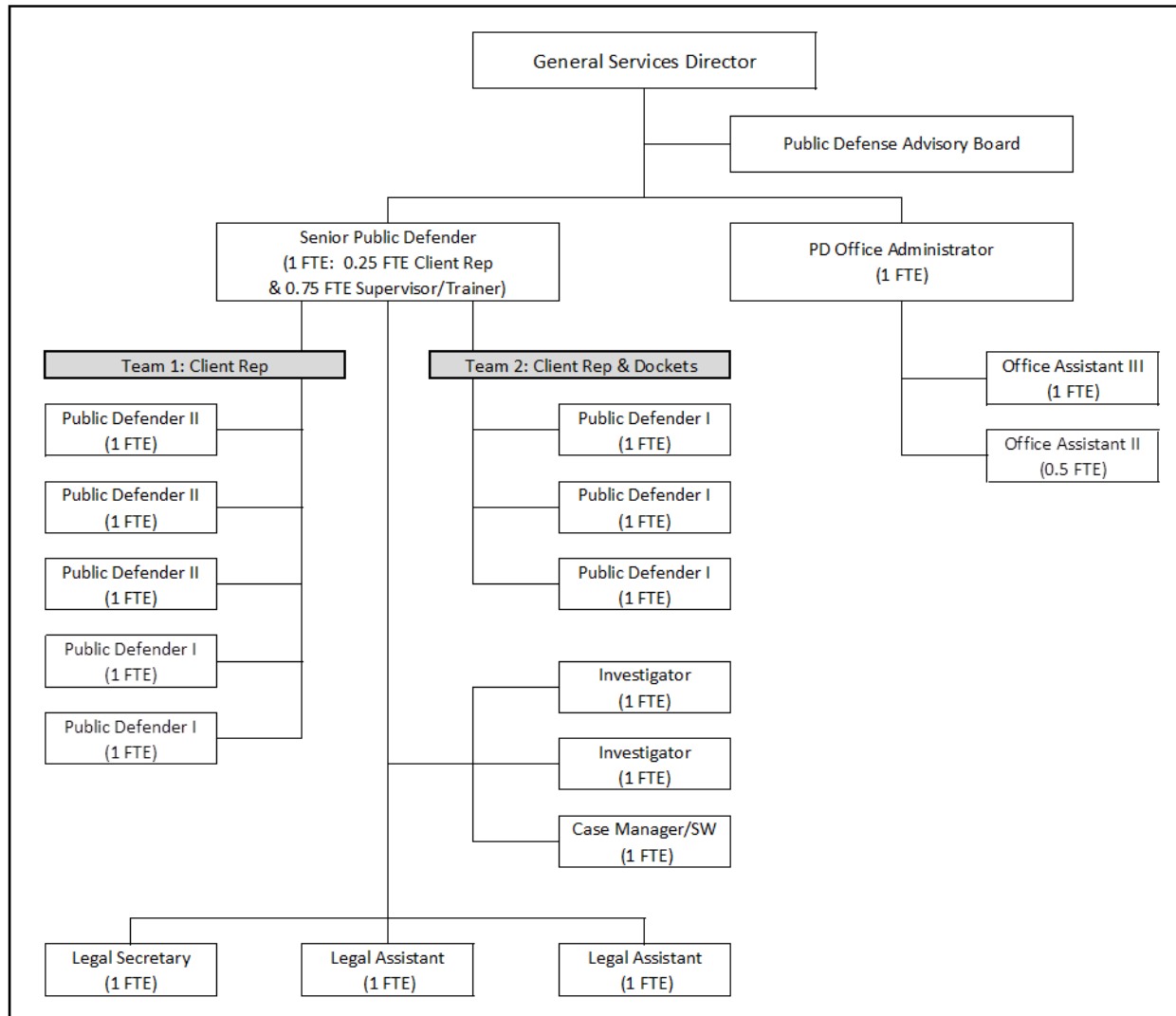
The workgroup recommends the 2019/20 indigent defense biennial budget include necessary funds for a package with the following components:

1. A public defender office with the personnel necessary to assume 45% of the current felony contract workload.
2. Contract attorney compensation adjustments for:
 - a) Indeterminate Sentencing Review Board cases
 - b) Remaining contract flat fee rates
 - c) Hourly rate paid in '2nd and 3rd strike' cases
 - d) Hourly rate paid in 'homicide' cases



Public Defender Office – Organization Chart

(limited to no more than 50% of the felony workload)



Public Defender Office Projected Net Cost (2019/20)

TOTAL BIENNIAL COST FOR 2019/20 9 FTE ATTORNEYS (6.75 FTE Caseloads) and Staff

Salary & Benefits	\$3,010,373
Office Expenses	\$146,883
Tenant Improvements (One-time cost)	\$80,000
Total	\$3,237,256
Caseload (Current Cost)	(\$2,346,344)
Investigation (Current Cost)	(\$250,000)
Net Additional Cost	\$640,912



Private Attorney Contractors – Compensation

Adjustments & Projected 2019/20 Biennial Cost

- Change ISRB* flat fee cases to hourly.....\$243,000
- Increase compensation for remaining cases (by inflation since 2009).....\$490,562
- Increase hourly rate from \$90 to \$110 for '2nd & 3rd Strike' and 'homicide' cases.....\$70,000

Total \$803,562

* ISRB = Indeterminate Sentencing Review Board



Summary: 2019/20 Proposed Package

Public Defender Office: \$ 560,912 on-going
\$ 80,000 one-time
\$ 640,912

Contractor Adjustments: \$ 803,562

Biennial Total: \$ 1,444,474



Council Feedback and Guidance

- Questions / clarifications
- Council feedback and guidance

