

# Benton & Franklin Counties Office of Public Defense 2015 Strategic Plan

## Benton County Operations

Thank you for your interest in the Benton & Franklin Counties Office of Public Defense (“BFOPD”). BFOPD is charged with providing legally mandated public defense services to indigent persons facing criminal charges and certain civil cases, in the courts of Franklin County.

This **Strategic Plan** outlines how BFOPD intends to continue to advance its Mission and uphold its Values in the year 2015.

### Mission

The Mission of the Benton & Franklin Counties Office of Public Defense is to provide quality, cost-effective, legal representation to indigent and other qualified persons charged with criminal offenses, or otherwise facing incarceration or loss of liberty interest, so as to protect their Constitutional and other legal rights, educate them about the criminal justice system, and champion the interests of justice. The Benton & Franklin Counties Office of Public Defense will always be mindful of the fact that the resources that enable it to advance its Mission are entrusted to it by the taxpayers of Benton & Franklin Counties, and as such it will constantly strive to improve the efficiency and effectiveness of its team, of system which it manages, and of systems of which it is a part of, so as to always be a good steward of such resources.

### Values

In order to advance its Mission, all Benton & Franklin Counties Office of Public Defense staff and contractors share the following Values.

<b>A</b>	<b>Teamwork</b>	We are constantly seeking out and developing inter-office and intra-office synergistic relationships through which to accomplish shared goals and create win-win outcomes.
<b>B</b>	<b>Effectiveness &amp; Efficiency</b>	We are always choice-driven and introspective so as to maximize effectiveness (do that which has the most effect on advancing the Mission) and efficiency (while consuming the least amount of resources)
<b>C</b>	<b>Quality</b>	We take pride in quality work product in all aspects of what we do.

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<b>D</b>	<b>Cost-Effectiveness</b>	We recognize the fiduciary duty we owe to the taxpayers who provide the resources by which we can advance our Mission and always strive to maximize cost-effectiveness without jeopardizing quality.
<b>E</b>	<b>Compassion &amp; Fairness</b>	We recognize that all members of the public with whom we interact and for whom we provide services are fellow community members and citizens and we will treat them with respect, compassion, and fairness.
<b>F</b>	<b>Effective Risk Management</b>	We will always be mindful of the liability related interests of Benton & Franklin Counties and constantly seek to minimize the exposure of the Counties to liability risk.
<b>G</b>	<b>Continuous Improvement</b>	We recognize and embrace the dynamic nature of many factors that affect our ability to advance our Mission and as such, constantly seek out, and take action on, ways to improve every aspect of our operations. We will never settle for “good enough” or accept that the “way it has always been done” is necessarily the best way to continue to do it.

**Goal #1 – Public Defense Improvement after *Wilbur v. Mt. Vernon*  
Part 1: Benchmarks, Oversight & Reporting**

**Summary:** The case of *Wilbur v. Mt. Vernon* was the latest in a series of lawsuits in the State of Washington implicating the public defense systems in various jurisdictions. In particular, *Mt. Vernon*, challenged the sufficiency of the municipal court public defense system serving the cities of Mt. Vernon and Burlington. In the end, the US District Court where the lawsuit was filed, found the public defense system in Mt. Vernon and Burlington extremely inadequate. However, contrary to the opinions written in past lawsuits, this time, Judge Lasnik was quite clear on the benchmarks he regarded as important in evaluating a public defense system. Along with other jurisdictions across the state, this office will be tracking key benchmarks based on this court opinion so as to ensure that our public defense system meets legally required standards.

After extensive review of this case, attendance at training conferences and collaboration with other jurisdictions, the following benchmarks appear to be the most important ones to track in order to gauge the continual effectiveness of our system of public defense<sup>1</sup>.

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<sup>1</sup> These benchmarks are complex and difficult to track since it is not a simple case of “the more the better.” For example clearly there comes a point where too much investigator usage (on cases where they aren’t necessary) or  
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1. Number of trials held
2. Number of motions filed
3. Frequency of jail visits
4. Frequency of investigator usage
5. Frequency of expert usage
6. Frequency of competency evaluations
7. Caseloads (already tracked and controlled closely)

This strategic goal calls for the effective tracking, review, and even publication (if appropriate) of these metrics so as to constantly be able to keep a figurative “finger on the pulse” of the effectiveness of our public defense system.

### Deliverables for Goal #1

1. Present training to public defenders on the metrics to be tracked and the reasons for doing so (ie pursuant to *Wilbur v. Mt. Vernon*). **Already done at March, 2015 continuing legal education (“CLE”) seminar.**
2. Finalize the list of benchmarks to be tracked. **Already done.**
3. Establish reliable data sources for each benchmark. **By June 1, 2015**
4. Establish a meaningful and effective framework for compiling the data from each benchmark. **By June 1, 2015**
5. Publish any necessary policies to effectuate the collection and compiling of benchmark data. **By July 1, 2015**

### Goal #2 – Public Defense Improvement after *Wilbur v. Mt. Vernon* Part 2: Information for Clients and Best Practices

**Summary:** As clearly indicated by the court opinion in *Wilbur v. Mt. Vernon*, an effective public defense system is far more than just meeting benchmarks. It is also critically important that the system be designed to maximize the ability of public defense clients to learn about the criminal justice system and their rights within that system, so that they can be effective parts of their own defense teams, and so that they can make knowing and intelligent decisions about their cases. Furthermore, some benchmarks, even while mentioned and emphasized in the *Wilbur* decision, are difficult to impose as a mandatory or tracked benchmark since most of this office’s defenders are independent contractors. The recent decision in *Dolan v. King County* demonstrated the pitfalls associated with imposition of excessive restrictions or conditions

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excessive trials (thereby potentially indicating the inability of defenders and prosecutors to negotiate proper resolution of cases) are harmful not only for the system as a whole (including fiscal harm), but even for the rights of individual clients.

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governing the professional services provided by an independent contractor and illustrates a danger that is to be avoided at all costs<sup>2</sup>.

In light of the above, OPD will be supplementing the tracking of benchmarks as detailed in Goal #1 with two additional strategies: **Informational Publications for Clients**, and **Best Practices for Defenders**. More specifically, these strategies entail the following:

### **Informational Publications for Clients**

Key publications educating clients about the criminal justice system and informing them of their rights within this system, both on an overall basis and within the public defense system local to Benton & Franklin Counties, will be provided to each and every client who is assigned a public defender. To maximize the effectiveness of these publications, they will be bi-lingual (English and Spanish). This is intended to simultaneously protect the rights of clients and reduce the risk profile of Benton & Franklin Counties' public defense system<sup>3</sup>.

These publications will include:

1. Information about basic rights that all public defense clients have (client "Statement of Rights").
2. Information about upcoming court dates and their purposes, as well as important obligations to the court.
3. Information about the 72 hour pre-filing detention period<sup>4</sup>, what it means, and the rights of defendants during that period.
4. Information about how to file complaints about a public defender as well as the protocols utilized by OPD and the courts to resolve such complaints.

### **Best Practices for Defenders**

The following best practices will be highly encouraged of contract defenders (and required of Staff Defenders). Failure to follow best practices will not be a *per se* breach of contract, but is a factor that will be considered for contract award purposes.

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<sup>2</sup> In short, the *Dolan v. King County* case was filed because the public defense non-profit agencies with which King County contracted for services believed that King County exercised too much control over how they provided these services. In the end, the court sided with the plaintiffs and agreed that given the amount of control King County exercised, the so-called independent contractors were actually de facto employees and were therefore entitled to the same benefits extended to other employees including access to the PERS retirement plan.

<sup>3</sup> Making sure clients are well informed serves a dual purpose in reducing liability risk. First, knowledgeable clients are better empowered to utilize complaint processes built into the system (including systems processed through the courts and administratively through OPD) to address their grievances and are therefore less likely to resort to litigation. Second, if litigation was ever initiated against the County, the existence of strategies designed to educate clients about their rights would undoubtedly be found to be a significant mitigating factor.

<sup>4</sup> This is often (inaccurately) referred to as "72 hour hold" or "72 hour investigative hold." In fact those words don't exist in the court rules. Instead, court rule (CrR 3.2.1(f)) requires that when people are arrested without a warrant issued by the court, they can only be held in jail for a maximum of 72 hours without charges being formally filed by the prosecutor.

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1. Use of an Initial Consultation Checklist with important questions, identified by the court in *Wilbur*, which should be asked and answered at the outset of representation.
2. Meeting with incarcerated clients within 72 hours of notice of appointment and meeting with out-of-custody clients as soon as possible.

Together, with Benchmarks, Oversight & Reporting, Informational Publications for Clients and Best Practices for Defenders will constitute a three pronged approach to maximizing the effectiveness and legal defensibility of the local public defense system being administered by OPD.

## Deliverables for Goal #2

1. Finalize publications to be provided to clients covering all of the points indicated in the Summary of this goal, and have them available in both English and Spanish. **By July 1, 2015.**
2. Coordinate with all jurisdictions, the jail, and defenders assigned to initial appearance dockets to ensure that all clients will receive these publications at the appropriate juncture of their representation. **By July 1, 2015.**
3. Finalize and publicize an Initial Consultation Checklist for use on a “Best Practices” basis by contract defenders and on a mandatory basis by Staff Defenders. **By June 1, 2015.**
4. Include the Best Practice strong recommendation of meeting with clients within 72 hours of appointment (incarcerated clients) and as soon as possible (out-of-custody clients) in CLE training. **Already Done.**

## Goal #3 – Contractor Manual and On-Boarding Program

**Summary:** Over the past many years, there have been countless changes and evolution in contract management, contract compliance, office administration and general public defense strategic initiatives in this office. At the same time there has been constant change in the overall legal landscape of public defense as a whole as well as a seemingly never-ending number of contract defenders coming and going. While OPD has constantly refined its systems and procedures through this period of time, there has seemingly never been enough of a pause to enable the reduction of these systems and procedures to writing. Recognizing the importance of having these systems and procedures in writing for external purposes (ie for new contract defenders to learn), for the sake of consistency, and for business continuity reasons, time will be taken this year to develop a comprehensive Contractor Manual and consistent On-Boarding Program for new contract defenders. In light of the unique differences between contract defenders and staff defenders, while portions of the staff field training manual (that was developed almost two years ago) will be utilized, the Contractor Manual and On-Boarding Program will largely have to be created from the ground up.

## Deliverables for Goal #3

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## Deliverables:

1. Work with staff to develop a list of items that should be included in an On-Boarding Program. **By April 30, 2015**
2. Draft a comprehensive On-Boarding Program including informational documentation, reference to key policies, specific instructions on important administrative and reporting functions and other resources needed to maximize the effectiveness of the on-boarding process. **By August 1, 2015**
3. Draft a comprehensive Contractor Manual (either as a document or in the form of a dedicated web page or other cloud-hosted solution) to serve as a central reference document providing contract defenders with on-going guidance on how to fulfill contract duties, navigate administrative requirements, access resources and more. This Manual is envisioned to be a fully hyperlinked document that will contain links that will take users directly to forms, training resources, and other web or cloud-hosted resources easily and directly. **By September 1, 2015**

## Goal #4 – Better Information Coordination with Internal Customers

**Summary:** OPD regularly works with a number of fellow criminal justice system stakeholders, collectively referred to here as “Internal Customers.” Internal Customers range from jails and law enforcement agencies to courts and clerks offices. In the course of doing business with Internal Customers, a large amount of data and documentation is regularly exchanged and updated, some of which is transactional and some of which is more reference-oriented. As with the issue identified above with contract defenders, it is desirable (for more or less the same reasons) to have protocols and procedures and easy access to reference documents available in one central location or electronic document so as to facilitate the dealings with Internal Customers. This Goal will involve a multi-step process of identifying the full range of Internal Customers and what is involved in the interactions with each, identifying the documents or data involved, designing reference documents to facilitate the process, and integrating everything into one central digital source of information whether in the form of a reference document with hyperlinks, or a dedicated web page or other cloud-hosted solution.

## Deliverables for Goal #4

### Deliverables

1. Identify all of the stakeholders that should be included in this project. **By June 1, 2015**
2. Review interactions with the stakeholders and contact stakeholders individually to evaluate the nature of such interactions including data and information exchanged, documents and reference information commonly utilized and key contact people. **By August 1, 2015**

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3. Draft documents and reference material to facilitate interactions and transactions with stakeholders. **By Oct 1, 2015**
4. Compile materials, documents and information in an easy to reference manner either in a reference document or a web-based portal of any sort and provide access to all necessary stakeholders. **By end of the year**

## Goal #5 – Compensation Survey and Recommendations

**Summary:** One of OPD’s critical strategic needs is the availability of contract defenders of good professional quality, who are willing and able to provide public defense services at a cost that is reasonable and that therefore makes fiscal sense for Benton County. In recent years, the combined dynamics of the new caseload standards<sup>5</sup> and state-wide workforce changes<sup>6</sup> has made the public defense contractor marketplace much more competitive. To ensure that Benton County continues to have access to high-quality, cost-effective public defense services through contractors, it appears to be important for the compensation Benton County offers to contract defenders to be competitive in the state-wide marketplace. This Strategic Goal consists of conducting a survey of compensation rates for public defenders state-wide in order to gauge the competitiveness of our local compensation rates and ensure that we continue to have access to a good pool of interested and professionally competent public defenders.

## Deliverables for Goal #5

### Deliverables:

1. Conduct state-wide compensation survey for employed and contracted public defenders. **By September 1, 2015**
2. Present findings to the Board of County Commissioners including any recommendations for changes (if any are appropriate) to our current compensation structure. **By November 1, 2015**

## Goal #6 – Leverage Technology

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<sup>5</sup> The State Supreme Court, in 2012, adopted strict caseload standards that required private attorneys contracting for public defense services to restrict their private practices proportional to the percentage of a “full time practice” their public defense services constitute (according to state-wide standards on the number of public defense cases that constitute a full-time caseload). This has made it much less lucrative for private attorneys to contract for public defense services and has resulted in fewer attorneys being willing to do so.

<sup>6</sup> A number of large public defense employers, including King County and Yakima County have changed the composition of their public defense staffing, seemingly changing the overall state-wide pool of available potential public defense contract candidate.

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**Summary:** The availability of technology-driven business solutions has the potential for enhancing and improving the delivery of services provided by OPD and streamlining OPD's administrative functions as well. Ultimately OPD can do what it does, better, more efficiently, and more cost effectively, if technology is properly leveraged. While this endeavor is, of course, one that is a long term one and that will never really be completed and over with, there are a few areas of focus in this regard for 2015:

- a) Technology driven solutions for enhancing greater collaboration and information sharing amongst defenders, both staff and contractor (see Goal #8 for more details);
- b) Technology driven solutions for simultaneously going as "paperless" as possible for staff defenders in working on their cases, and enhancing the ability of defenders to access resources and utilize multi-media presentation and communication tools wherever they are;
- c) Maximum utilization of technological solutions for automatically collecting the Benchmarks referenced in Goal #1;
- d) Use of technology to improve communication with clients;

### Deliverables for Goal #6

1. Work with the Information Technology department and defenders in devising a framework for information sharing and collaboration amongst defenders (see Goal #8 for exact sequence and contents of deliverables);
2. Confirm status of "digital discovery"<sup>7</sup> as to all prosecutor's offices that provide discovery to Staff Defenders. **By June 1, 2015**
3. Research the "state of the art" as to technology use in courtroom both for access to resources during routine court appearances and for multi-media communication/presentation during trial. **By August 1, 2015**
4. Determine feasibility of utilizing Defenderdata (our digital case management system) on a fully cloud-hosted and web or mobile-app accessible basis<sup>8</sup>. **By Sept 1, 2015**
5. Research the use of automated means of collecting motion filing data from court records. **By June 1, 2015**

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<sup>7</sup> "Discovery" consists of police reports and other documents supporting the prosecutor's case against public defense clients. Historically, these were sent to our office (and other defenders) in printed out "hard copy" form. The need to archive these paper copies and the associated storage space constraints, led to a decision to digitally archive the paper copies. Of course if prosecutor's offices would be willing to provide the discovery digitally (that is by email, most commonly) it would make the effort to archive these documents digitally a must easier and more efficient process. Most prosecutor's offices with whom OPD works have made this transition.

<sup>8</sup> Currently, while Defenderdata is "cloud-hosted" or hosted on servers operated by the company that operates Defenderdata, it is only accessible through a client application that must be loaded onto a desktop or laptop PC with access to the internet. This limits the ability of defenders to access information contained in Defenderdata (which is fast comprising the entirety of client files for cases defended by Staff Defenders) since they cannot do so using mobile devices. Since all courtrooms now have reliable access to the internet through WiFi, access to Defenderdata file records through mobile devices (such as iPad tablets) may be an ideal way for OPD to operate on a "paperless" manner.

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## Goal #7 - At Least 15 Hours of Continuing Legal Education Training

**Summary:** A constant and pervasive overriding goal of OPD is to ensure that the public defense services provided to its clients is the best that possible given circumstances including fiscal considerations. To ensure maximize the quality of the public defense services provided, OPD has always provided free, local continuing legal education (“CLE”) training to contract and staff public defenders and has ensured that the volume of these high quality training offerings far exceeds the minimum of seven annual hours of CLE credits that RCW 10.101 requires of every public defender in the State of Washington. This year, as with prior years, OPD is committed to providing no less than 15 hours of CLE credits to its contract and staff public defenders including an intensive trial advocacy clinic.

### Deliverables for Goal #7

1. Provide at least 15 hours of free, local, continuing legal education training, in topics relevant and applicable to public defense work. **By the end of the year**
2. Host a trial advocacy clinic consisting of both classroom instruction and intensive/realistic simulated courtroom sessions and geared toward defenders with 1-3 years of experience. **By the end of the year**

## Goal #8 – Create a Framework for Better Collaboration and Information Sharing Amongst Defenders

**Summary:** As with last year, to evaluate my leadership in the office and the effectiveness of programs and resources currently being utilized to support public defense operations, I utilized an anonymous “Leadership Scorecard.” One of the recurrent themes in this year’s responses was the desire to have more opportunities for collaborative resource sharing and professional development amongst public defenders. In particular, a framework for the sharing of information and documents/forms was requested. A number of systems are potentially available that may address the identified needs. This includes the use of a listserve, discussion board, forms bank, or brief bank.

### Deliverables for Goal #8

1. Conduct a survey of public defenders specific to the needs, desires and especially the desire to participate in information and resource sharing options including a listserve, discussion board, forms bank or brief bank. **By July 1, 2015**
2. Based on the results of the survey identified in deliverable #1, look for off-the-shelf or in-house customized solutions to host the desired resources. **By October 1, 2015**
3. Implement the resource sharing system(s). **By end of the year**

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## Goal #9 – Improve Exit Management Procedures

**Summary:** With recent departures of both staff defenders and contract defenders, a need to have consistent, easily understood, and uniformly applied exit management procedures has been identified. While, by and large, the departure of defenders has been managed relatively well, there are a few issues, namely caseload transfer or retention management and on-going post-termination/expiration contract compliance, that merit more attention.

### Deliverables for Goal #9

1. Work with Staff Defenders and administrative staff to develop a list of items that should be addressed with departing contract defenders. **By June 1, 2015**
2. Review current policies and contract provisions relating to handling of caseloads of outgoing defenders and evaluate from a client representation, fiscal, and judicial efficiency perspectives. **By August 1, 2015**
3. Work with County Administration and Risk Management to develop a policy regarding enforcement of post-termination/expiration contract obligations (primarily on-going professional liability insurance obligations). **By June 1, 2015**

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