

Benton County Office of Public Defense
7122 W Okanogan Pl, Bldg A
Tel (509) 222-3700
BentonCountyDefense.org

BENTON COUNTY OFFICE OF PUBLIC DEFENSE

2015 ANNUAL REPORT

“Quality Representation – Fiscal Responsibility”

TABLE OF CONTENTS

Table of Contents

Table of Contents	1
About this Report	2
2015 Public Defense Facts	3
2015 Overview	4
Financial	6
Operations	10
Other Updates and Achievements	12
2015 Goal Summary	15
Conclusion	19

ABOUT THIS REPORT

About this Report

As the Public Defense Manager for Benton County, I am proud to present the 2015 Annual report for our operations. This report recaps many of the highlights of our operations in 2015 including a year-end financial snapshot, and also summarizes our key achievements including achievements that fulfilled strategic goals set at the beginning of 2015.

A Strategic Plan for 2016 is being published simultaneously to this report. I encourage you to review that plan if you are interested in what this office plans to accomplish in 2016 and how these goals align with our stated Mission and Values.

Thank you for your interest in our office and what we do.

Eric Hsu
Public Defense Manager
April 20, 2016

2015 PUBLIC DEFENSE FACTS

PUBLIC DEFENSE IN BENTON COUNTY 2015



66% OF ADULT CRIMINAL CASES FILED GOT APPOINTED TO PUBLIC DEFENDERS



Over 6,000 criminal cases handled



OVER 40 CONTRACT AND STAFF PUBLIC DEFENDERS



\$13.45 PER CAPITA SPENT ON PUBLIC DEFENSE FOR ADULT CASES

FILING RATE PER 1,000 POPULATION



2015 OVERVIEW

2015 Overview

2015 was a year of challenges in many forms, some of which were unique and unprecedented. BCOPD successfully navigated these challenges and has even taken additional steps in improving the quality of its services and the accountability of its finances.

FINANCIAL SNAPSHOT

Expenditures as compared with projected (green bar indicates underspent, red bar indicates overspent)

BUDGET LINE	TREND AS OF DEC 31, 2015
Superior Court contracts	-9.9%
Superior Court professional services	-13.9%
District Court contracts	+8.6%
District Court professional services	-9.4%

OPERATIONAL SNAPSHOT

Caseloads as compared with recent year averages (green bar indicates below average, red bar indicates above-average)

JURISDICTION	TREND AS OF DEC 31, 2015 COMPARED WITH 2010-2014 AVG
Superior Court	+1.8%
District Court	+5.3%
Juvenile	-19.6%

OTHER HIGHLIGHTS

Termination of joint public defense operations with Franklin County

Effective December 31, 2015, Benton County terminated joint public defense operations with Franklin County and now we are the Benton County Office of Public Defense ("BCOPD"), serving the courts of Benton County only. All previously existing bi-county public defense contracts have now also been terminated.

Implementation of Performance Standards Monitoring

Performance Standards Monitoring is a two-pronged approach to public defense services quality control. Prong one consists of collecting and monitoring data about public defender performance and that prong was fully implemented in 2015. Prong two consists of in-court observations and this prong is part of the Strategic Plan for 2016.

2015 OVERVIEW

In-House Training

BCOPD continues to be committed to providing cutting edge training to its public defenders through its In-House Training program. In 2015, 13 hours of local, free, training was provided on topics including legal financial obligations (“LFOs”), trial strategy, use of experts, and ethics.

Mental Health Evaluations

Mental health concerns continue to top the list of dynamics that are making public defense cases both more challenging and more expensive. In 2015, BCOPD implemented the Scheduled Evaluation Program (more details below) to make mental health evaluations quicker, easier and less expensive for the County while maintaining a high level of expert evaluator quality.

Financial

Other than overhead and personnel costs for Staff Defenders, Administration and support staff, BCOPD's financials are broken down as follows:

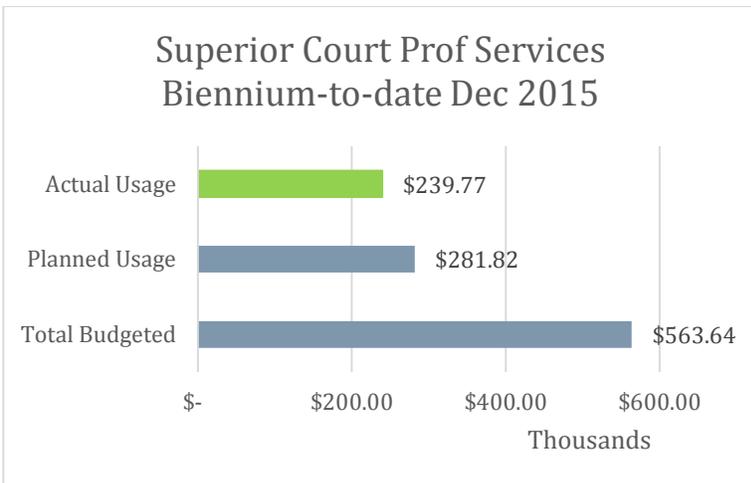
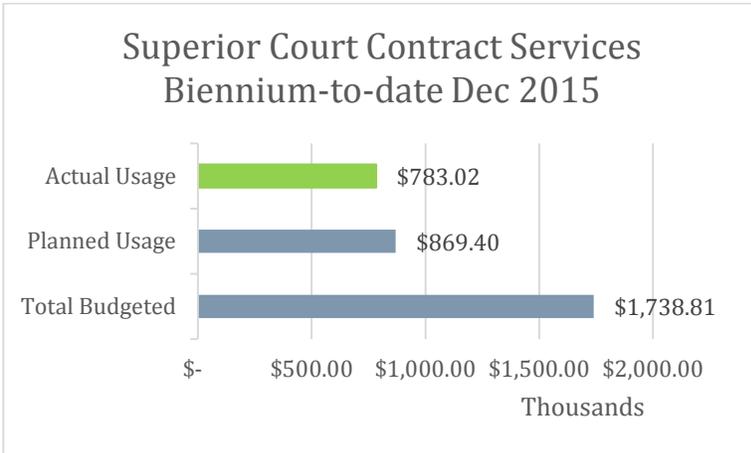
LINE ITEM	PURPOSE
Superior Court contracts	Public defenders Expenditures for contract defenders providing public defense services in Benton County Superior Court on criminal, civil commitment, child support contempt, and LFO collection cases.
Superior Court professional services	Support professionals Separate expenditures for professional services to support public defense cases in Superior Court including, but not limited to, investigator costs, expert services, transcripts, medical records and mental health evaluations.
District Court contracts	Public defenders Expenditures for contract defenders providing public defense services in Benton County District Court on criminal cases.
District Court professional services	Support professionals Separate expenditures for professional services to support public defense cases in District Court including, but not limited to, investigator costs, expert services, transcripts, medical records and mental health evaluations.
Juvenile Court contracts	Public defenders Expenditures for contract defenders providing public defense services in Benton County Juvenile Court on criminal cases, civil status offense cases, truancy, and dependency cases (representation of children only).
Juvenile Court professional services	Support professionals Separate expenditures for professional services to support public defense (almost entirely) criminal cases in Juvenile Court including, but not limited to, investigator costs, expert services, transcripts, medical records and mental health evaluations.

Note: BCOPD did not manage the Juvenile Court line items in 2016 but will be doing so starting July 1, 2016.

FINANCIAL

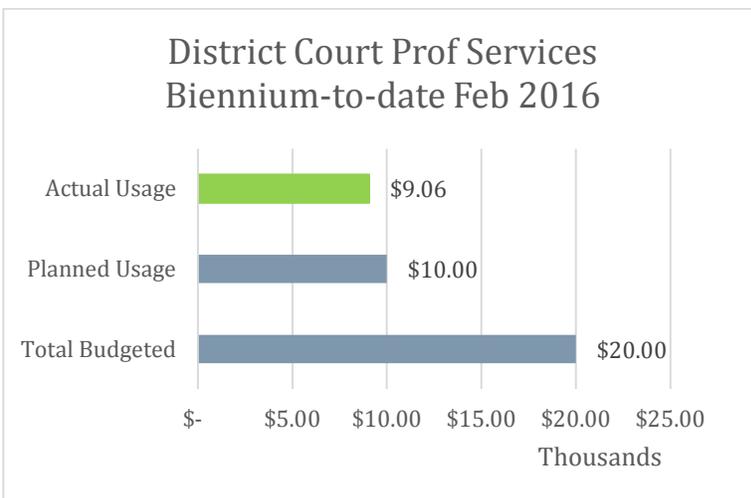
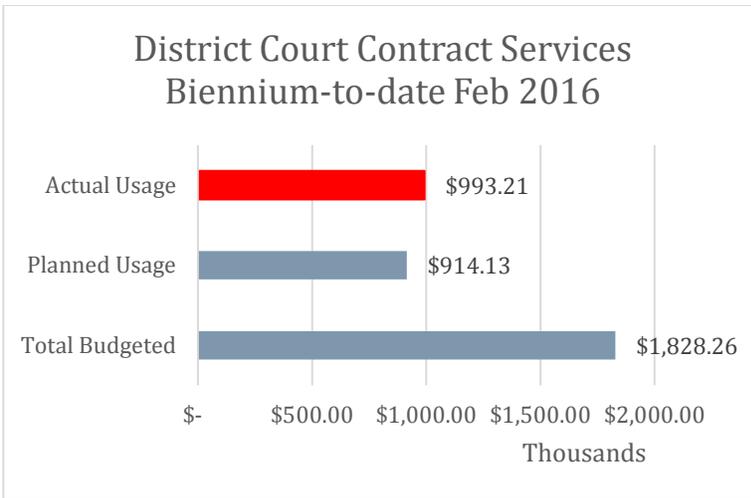
FINANCIAL STATUS AS OF END OF 2015

Budget planning and appropriations in Benton County are done on a biennial basis. 2015 was the first year in the 2015/2016 biennial budget cycle. The following charts show budget expenditures in the above line items managed by BCOPD as of December 31, 2015 and compares actual expenditures with projections based on an even rate of monthly expenditures over the two year period.



As of mid-biennium, all contract services line items were underspent except for District Court Contract Services

FINANCIAL



FINANCIAL DRIVERS AND CONTROLS

BCOPD expenditures can be divided between a) caseload driven expenditures; and b) discretionary expenditures.

Caseload Driven Expenditures

The majority of the budget (the line items for Superior Court and District Court contract services) is caseload driven. Very little can be done operationally to control costs with caseload driven expenditures. This is because of the combination of the legally mandated nature of public defense services and strict caseload standards established by the State Supreme Court. Instead of directly controlling costs, for caseload driven expenditures, the focus is on indirectly controlling them to prevent wasted or redundant costs. BCOPD does this through the following:

FINANCIAL

- **Tight financial controls** to ensure that contractors are only paid for the work they do and do not over-bill.
- **Negotiated compensation rates** that are competitive enough to attract and retain appropriate levels of talent while being accountable to the taxpaying public.
- **Effective caseload distribution** to ensure that contractors who are paid flat monthly compensation for “up to” certain maximum caseloads get actual caseloads as close to those maximum caseloads as possible.
- Creating enough **professional training and opportunity** to retain talent and minimize turnover (contractor turnover is one of the #1 sources of duplicative compensation for cases)¹.

DISCRETIONARY EXPENDITURES

This category of expenditures are for professional services to support public defense cases. As opposed to caseload driven expenditures, a great deal of control is exercised over discretionary expenditures. Careful effort is made to find the balance between over-restriction (and potential ineffective representation issues) and under-restriction (and issues with irresponsible spending). BCOPD is always looking for ways to provide better services for less cost whether through negotiated contracts, economies of scale, or other similar means. Some of the ways BCOPD actively controls discretionary expenditures include:

“*BCOPD is always looking for ways to provide better services for less cost...*”

- Requiring **pre-approval of all discretionary expenditures** with approvals made by the Public Defense Manager or designee only, after review of appropriate supporting information.
- **Reasonable rate caps** for certain services (such as investigative services where rate caps depend on the type and severity of the case).
- **Negotiated contracts** with favorable, below-market rates with professionals (in return for maintaining a certain volume of business).
- **Written policies** for most categories of expenditures (including a very specific travel policy) to eliminate wasteful, improper or frivolous spending.
- Working with services professionals to **identify economies of scale** to reduce costs (such as the Scheduled Evaluation Program for mental health forensic services).

¹ This is a problem that is virtually impossible to resolve. Out-going contract attorneys usually have a sizeable caseload even at the end of their contract termination notice period since criminal cases often take a long time to resolve. There are potential ethical problems with requiring attorneys to continue representation on a case without on-going compensation and this can even be impossible under many circumstances because contract-attorneys leave the area after contract termination. Therefore it is necessary to reassign many cases upon departure, resulting in duplicative compensation.

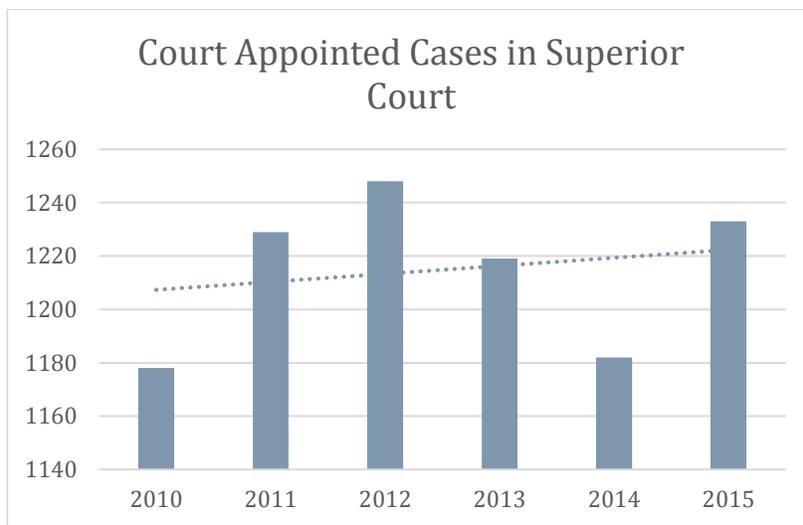
OPERATIONS

Operations

2015 CASELOADS

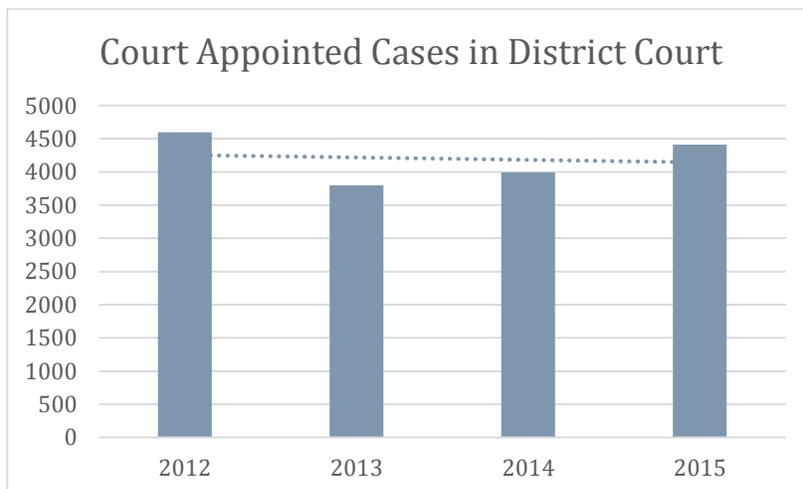
The following charts show 2015 caseloads in the various courts in Benton County. Reference data for recent years is provided for reference and trend-indicator purposes.

SUPERIOR COURT



After a few down years following a peak in 2012, caseloads are on the rise – a trend that is expected to continue in light of Public Safety Sales Tax fueled police officer hiring.

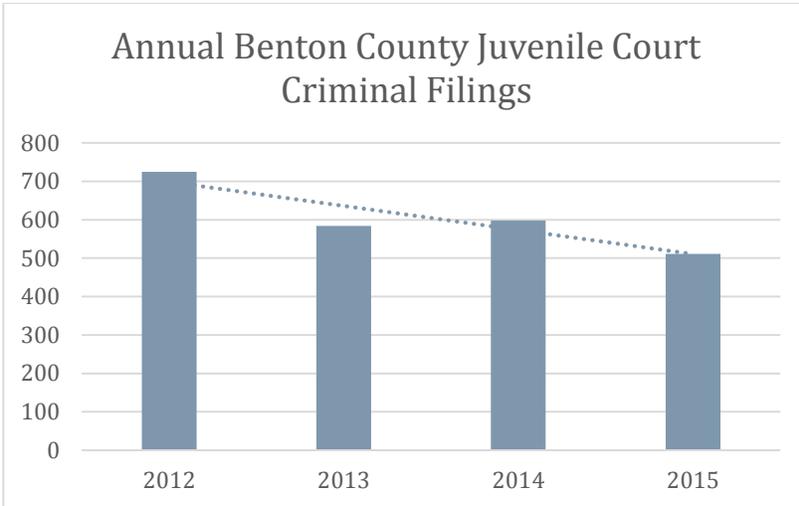
DISTRICT COURT



2013 saw a significant drop in caseloads after the high set in 2012. However, it is once again trending up and with Public Safety Sales Tax driven hiring, the 2016 caseload is anticipated to exceed 2012.

OPERATIONS

JUVENILE COURT



Unlike caseloads in adult court, Juvenile Court caseloads are significantly and consistently down from the high set in 2012.

***Note – because of the way records have been kept, and since all juvenile charged with criminal offenses are presumed indigent and entitled to public defense counsel, the number of actual filings should be very close to the number of appointments.*

OTHER UPDATES AND ACHIEVEMENTS

Other Updates and Achievements

TERMINATION OF JOINT PUBLIC DEFENSE SERVICES WITH FRANKLIN COUNTY

2015 saw the termination of the agreement between Benton and Franklin Counties to provide public defense services jointly through this office. As a result, this office has been rebranded “Benton County Office of Public Defense” and provide public defense services in the courts of Benton County only.

A number of important steps were taken to ensure that this termination went smoothly, especially for public defense clients. Especially delicate was the handling of bi-county public defense contracts, all of which needed to be terminated and re-awarded. Here are highlights of what was done in 2015 and the first part of 2016:

DATE	DETAILS
January, 2016	Office rebranded Re-branded office to make clear new Benton County-only role. Establish procedures for redirecting all clients and communications on Franklin County cases (including on-call phones for misdemeanor and felony matters) to Franklin County administrators.
March, 2016	Bi-county contracts terminated All bi-county public defense contracts (including homicide, juvenile criminal defense, involuntary treatment act defense, and adult drug court defense) terminated with the exception of juvenile dependency contracts
April, 2016	New contracts awarded RFQ for juvenile criminal public defense contracts, contracts awarded for juvenile criminal public defense, homicide, involuntary treatment act defense and adult drug court defense.
To be done before end of summer, 2016	Remaining bi-county contracts to be terminated Address issue of remaining bi-county juvenile dependency public defense contracts.

IMPLEMENTATION OF PERFORMANCE STANDARDS MONITORING

Need for Standards Monitoring

The court decision in *Wilbur v. Mt. Vernon* underscored the need for public defense agencies to have a good grasp of data by which it can properly evaluate the performance of its public defenders. This is especially important in Benton County since all but three of the county’s 40+ public defenders are contract defenders and are therefore not readily able to be supervised as to their performance.

OTHER UPDATES AND ACHIEVEMENTS

Data Collected and Monitored

As of October, 2015, all of the following data is reported by, or collected about, public defenders and are used for performance monitoring purposes and will be reported in quarterly reports:

DATA COLLECTED

Number of **trials**

Number of **jail visits**

Number of requests for **investigators**

Number of requests for **experts**

Number of requests for **mental health evaluations**

Number of significant **motions** filed

Caseload

Number of **complaints**

Education and Enforcement

The collection process was the subject of continuing legal education (“CLE”) blocks once in 2015 and again in early 2016. Furthermore, all criminal public defense contracts awarded after November, 2015 (with the exception of contracts for homicide and persistent offender matters where attorneys do not carry a caseload per se) have a Performance Metrics acknowledgement. This acknowledgment includes an affirmative agreement by the contract attorneys to cooperate with the process of data collection as necessary.

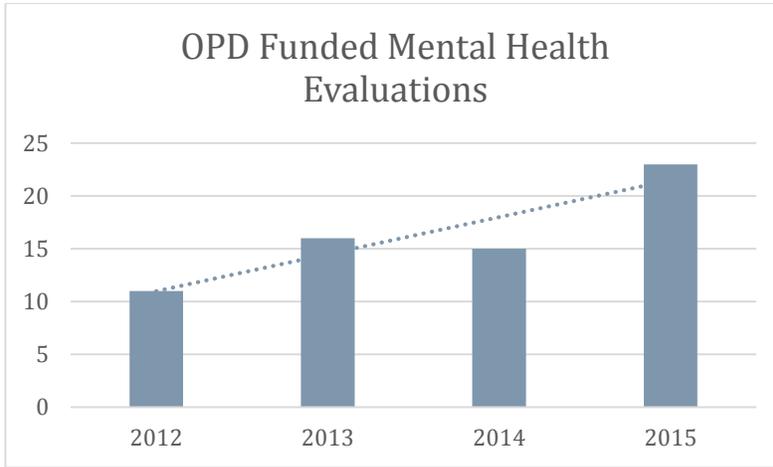
MENTAL HEALTH EVALUATIONS

Frequency on the rise

Mental health issues are more and more becoming a significant concern in public defense cases. The frequency of need for mental health experts, whether to assist with competency or capacity² has been on the rise over the past few years and has definitely hit an all-time high at the end of 2015.

² “Competency” refers to a defendant’s ability to understand the legal proceedings and to communicate with his/her public defender to aid and assist in his/her own defense. “Capacity” refers to a defendant’s ability to understand the nature of his/her actions and to understand that they were against the law.

OTHER UPDATES AND ACHIEVEMENTS



Expensive and hard to find experts

At the same time, finding experts that are qualified to both evaluate clients **and** testify at trial if necessary, has been difficult. Unlike major metropolitan areas such as Seattle or Spokane, Tri-Cities has very few qualified forensic psychiatrists or psychologists who can serve in this role. What few experts are available locally in Tri-cities are not only extremely busy, but can charge premium rates³.

Implementation of Scheduled Evaluation Program

“The Scheduled Evaluation Program provides clients with high quality mental health evaluations **quickly** and at **lower cost** to the County.

The Scheduled Evaluation Program was established in late 2015 and is designed to provide clients with high quality mental health evaluations quickly and at reduced cost to the County. The Scheduled Evaluation Program involves placing clients needing mental health evaluation services on a waiting list and scheduling them in a “batch” of 3-5 to be conducted in a one or two day period once every three to four weeks. So far one evaluator from Spokane has participated exclusively in this program and, in return for a regular volume of evaluations from Benton County, has agreed to significantly reduced rates⁴ and no travel charges. With 10 scheduled evaluation days already between October, 2015 and April, 2016 and 21 total scheduled evaluations, this program has already saved the County thousands of dollars in evaluation fees to-date.

The Mental Health Scheduled Evaluation Program

- Up to 50% savings in average evaluation fees

- 21 evaluations scheduled since program start in Oct, 2015

- Quicker evaluations for better client service and reduced liability risk


³ It has not been unusual to have local experts charge up to \$2,000 for competency evaluations, \$3,000 for capacity evaluations, and \$3,000 for a day of testimony.

⁴ Under the Scheduled Evaluation Program, rates are as low as \$800 for competency evaluations and \$1,500 for capacity evaluations depending on the number of evaluations per scheduled day.

2015 GOAL SUMMARY

2015 Goal Summary

In our 2015 Strategic Plan, we established a number of Strategic Goals for the office all designed to improve the office's *effectiveness* and *efficiency*. This section of the Annual Report recaps those Strategic Goals and describes the status of deliverables for each Goal.

GOAL #1 – PUBLIC DEFENSE IMPROVEMENT PART 1: BENCHMARKS, OVERSIGHT & REPORTING FOR PUBLIC DEFENSE IMPROVEMENT

Summary of Deliverables and Status

Metrics to be tracked:

1. Number of trials held
2. Number of significant motions filed
3. Frequency of jail visits
4. Frequency of investigator usage
5. Frequency of expert usage
6. Frequency of competency evaluations
7. Caseloads
8. Complaints

DELIVERABLE	SCHEDULED COMPLETION	STATUS
Present training to public defenders on metrics to be tracked and reasons.	March, 2015	Completed on time
Finalize list of metrics to be tracked.	March, 2015	Completed on time
Establish reliable data sources for each metric to be tracked.	June, 2015	Completed on time
Establish framework for extracting and collecting metrics data.	June, 2015	Completed on time but continuing to improve framework
Publish necessary policies to establish collection and compiling of metrics data.	July, 2015	Completed with new contracts issued starting November, 2015

GOAL #2 – PUBLIC DEFENSE IMPROVEMENT PART 2: INFORMATION FOR CLIENTS AND BEST PRACTICES

Client publications:

1. Basic rights of public defense clients.

2015 GOAL SUMMARY

2. Information about upcoming court dates, working with public defenders, and related.
3. Information about 72 hour pre-filing detention period including rights.
4. Information about how to file a complaint against public defenders.

DELIVERABLE	SCHEDULED COMPLETION	STATUS
Finalize client publications and have them available in both English and Spanish.	July, 2015	Completed on time with the exception of one form still needing Spanish translation.
Coordinate with other involved department and agencies to have forms available to all public defense clients.	July, 2015	Completed on time
Finalize and publish Initial Consultation Checklist for use by staff defenders and contractors.	June, 2015	Completed on time
Include best practice recommendation of meeting with clients within 72 hours of appointment in CLE training.	March, 2015	Completed on time

GOAL #3 - CONTRACTOR MANUAL AND ON-BOARDING PROGRAM

DELIVERABLE	SCHEDULED COMPLETION	STATUS
Work with staff to develop list of items to be included in on-boarding program.	April, 2015	Completed on time
Draft comprehensive on-boarding program.	August, 2015	Completed on time Comprehensive on-boarding packet now in use with all contractors.
Draft comprehensive contractor manual.	September, 2015	Completed on time Digital contractor introductory document (including hyperlinks to all applicable resources) now in use with all contractors.

GOAL #4 – BETTER INFORMATION COORDINATION WITH INTERNAL CUSTOMERS

This goal was put on hold to make time for higher priority matters including managing the discontinuation of joint, Benton-Franklin Counties public defense services, and efforts to resolve the *Fuentes v. Benton County* lawsuit. It will be incorporated into the 2016 Strategic Plan.

2015 GOAL SUMMARY

GOAL #5 – COMPENSATION SURVEY AND RECOMMENDATIONS

DELIVERABLE	SCHEDULED COMPLETION	STATUS
Conduct compensation survey for public defenders.	September, 2015	Completed on time
Present findings to Board of Commissioners with recommendations for compensation changes.	November, 2015	To be completed in first half of 2016 in time for biennial budget cycle.

GOAL #6 – LEVERAGE TECHNOLOGY

This goal was put on hold to make time for higher priority matters including managing the discontinuation of joint, Benton-Franklin Counties public defense services, and efforts to resolve the *Fuentes v. Benton County* lawsuit. It will be incorporated into the 2016 Strategic Plan.

GOAL #7 – CONTINUING LEGAL EDUCATION (“CLE”) TRAINING

DELIVERABLE	SCHEDULED COMPLETION	STATUS
Provide at least 15 hours of CLE training through in-house training program.	End of 2015	Completed 13 hours of training.
Host trial advocacy clinic.	End of 2015	Due to other urgent matters requiring management attention, this was postponed until the first half of 2016.

GOAL #8 – FRAMEWORK FOR BETTER COLLABORATION BETWEEN DEFENDERS

This goal was put on hold indefinitely because of lack of interest/response from public defenders about participating in information sharing systems such as a Facebook discussion group or brief bank. It may be revisited if interest increases.

GOAL #9 – IMPROVE EXIT MANAGEMENT PROCEDURES

DELIVERABLE	SCHEDULED COMPLETION	STATUS
Work with staff to develop list of items that should be addressed with departing contract defenders	June, 2015	Still in progress.
Review and evaluate contract provisions regarding handling of caseloads of out-going contract defenders.	August, 2015	Still in progress.

2015 GOAL SUMMARY

Work with County
Administration and Risk
Management to develop policy
regarding enforcement of post-
termination contract
obligations

June 1, 2015

Completed on time

CONCLUSION

Conclusion

PLEASE SEE 2016 STRATEGIC PLAN

Please see our 2016 Strategic Plan which has been published in tandem with this Annual Report. The Strategic Plan details our vision for 2016 and strategic goals and initiatives that will be used to further our mission.

CONTACT US FOR ANY QUESTIONS

If you have any questions at all about this report or what this office does, please contact us at the following:

Benton County Office of Public Defense

7122 W Okanogan Pl, Bldg A

Kennewick, WA 99336

P: (509) 222-3700

E: OPD@co.benton.wa.us

W: BentonCountyDefense.org