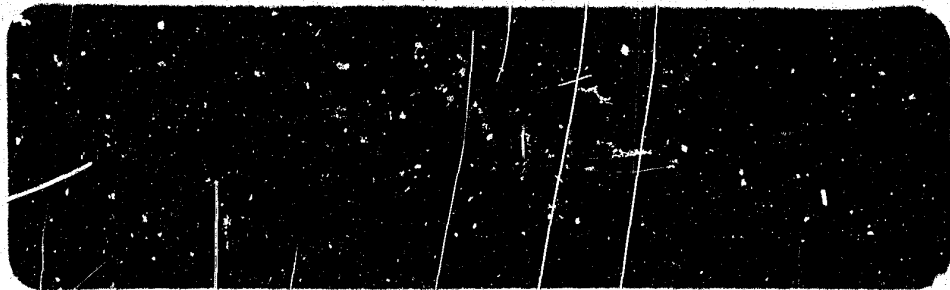
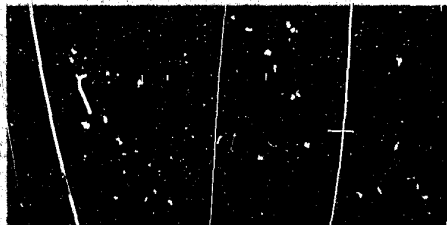


King County



DEPARTMENT OF
BUDGET AND PROGRAM PLANNING



25139

King County (WA) -
EASTSIDE PUBLIC DEFENSE PROJECT
LJPO GRANT #1283
EVALUATION REPORT

King County Law and
Justice Planning Office

January 1975

EASTSIDE PUBLIC DEFENSE PROJECT

LJPO #1283

EVALUATION REPORT

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EASTSIDE PUBLIC DEFENSE PROJECT, LJPO #1283

GRANTEE: CITY OF BELLEVUE

INTRODUCTION

This evaluation report deals primarily with the first nine months of operation of the Eastside Public Defense Project. The Project originally had a contract period running from 1/1/74 through 12/31/74, extended now through 3/31/75.

It was judged important to prepare an evaluation report on this project for a number of different reasons. First, the planning and operations of the project were and continue to be multijurisdictional efforts. The City of Bellevue serves as grantee, but the additional suburban cities of Bothell, Kirkland, Redmond, and Renton are contracting participants. King County actually performs the service. Second, the project is one organizational model for providing public defender services for persons charged with a misdemeanor offense. Information presented here may be useful to other governmental entities required to provide the services under Argersinger vs. Hamlin. Finally, the activities carried on through this project will have long-term budget impact on all the participating cities; all will have to offer public defense services because of the Supreme Court decision. Continuation of this particular organizational model, however, should depend on whether it is indeed successful. This report should provide information to assist in reaching that judgment.

This report will cover only the initial few months of what is expected to be a three-year LEAA-assisted effort. Sections of the report will deal with project procedures and management and four major objectives, two of which were set out in the grant application. A series of recommendations were generated and these recommendations conclude the report.

1. Project Procedures and Management

a. Project Administration

Project administrative procedures were established through joint planning by the participating cities, the King County Office of Public Defense and the King County Law and Justice Planning Office prior to the starting date of the project. Each participating city executed a contract with the OPD which specified the kinds of services to be provided and the cost of these services (Appendix A). In early 1974 the City of Bellevue circulated the Interlocal Agreement which authorized Bellevue to prepare the grant application and to act as project administrator (to submit progress reports, requests for reimbursement, collect matching funds for deposit against the grant funds) (Appendix B). Bellevue completed the application process with total budget based on estimates of caseloads developed by each of the cities, and has acted as administrator of the project since the letter of grant award was received.

The various agreements were executed and the project operational in all but one city on 1/1/74. The one problem that arose can be attributed to the amount of intergovernmental coordination required to make the project function. The City of Redmond did not sign a contract with OPD prior to the project starting date, intending to execute this when project approval from State Law and Justice was confirmed. Bellevue staff inferred from Redmond's signing the Interlocal Agreement that they were "on-board" as a full participant. The situation was corrected only in the third quarter when communications among Bellevue, King County and Redmond's City Attorney resulted in the latter processing the Notification of Grant Award and issuing a termination notice to the attorney who had to that point handled cases assigned by the Justice Court Judges.

June 1974 saw a change in the project director and the Department responsible for administration within the City of Bellevue. Because of the new director's limited previous contact with the project, a significant amount of assistance for administration, e.g., progress reports, intercity communications, has been supplied by the King County Law and Justice Planning Office through the third quarter.

b. Project Financial Affairs

The agreements between OPD and the cities state that the latter will be charged \$85 per case assigned an attorney, at the time of assignment. There is no charge for the larger number of persons screened who are not determined to be eligible for the public defense program.

A complete audit trail for the project is found in the LJPO #1283 account in the City of Bellevue's Grant Control Fund; the account was established through the same Resolution that authorized the signing of the grant contract with Law and Justice.

Guidelines for the project required that funds should flow among project participants in the following manner:

1. Matching funds were placed in the grant control account (through a transfer within the City of Bellevue of its share and a billing of the other cities);
2. Quarterly bills sent from OPD to the cities, with a copy to the project director; payment to OPD from the cities;
3. A request for reimbursement prepared from the OPD billing and forwarded to State LJPO.
4. When payment is received from the State, Bellevue reimburses the other cities, based on the OPD billing.

The delays in reimbursement - from the State to Bellevue, Bellevue to other cities, and some of the cities to OPD - have produced concern and sometimes questions among project participants. Particularly since this is a cooperative venture and keeping all parties apprised of deadlines or delays is difficult, a sure and rapid turnaround in payments is needed. The entire cycle has now been completed twice and, while still unwieldy, has gained some credibility.

c. Information and Sources

Information on the Eastside Public Defense Project is found in the records of the OPD, the Northeast and Bellevue Justice Courts, the Renton Municipal Court, and the City budgets from 1973.

The OPD maintains the following types of information for each city:

1. The number of people screened.
2. Interview schedules which determine indigency (Appendix C).
3. Number of persons assigned counsel, by type of offense, noting whether the case went to the public defender firm or a private attorney listed with OPD.
4. Synopsis of case dispositions as submitted by the attorney assigned.

Each court records misdemeanor cases filed by the cities (name, charge, arraignment and trial results). Judges and clerks can provide more subjective information on which to rate the project.

Data from the cities included a review of expenditures for public defense services prior to project implementation, as well as interviews with project contact persons.

d. Resources

The Office of Public Defense, King County, is located in the Smith Tower, downtown Seattle. The Office has a staff of seven,

including five members who share the responsibility for conducting the indigency determination interviews. Provision was made in the contracts between OPD and the Cities of Bellevue and Renton to have an interviewer at the Bellevue Justice Court and Renton Municipal Court at least one day per week to insure service for those without resources (e.g., time, transportation) to travel to Seattle.

Two types of legal services are utilized by OPD for eligible indigent clients: a public defender firm and members of the private bar on the OPD list. Attorneys on the list are willing to take public defender cases at a set fee; all have met certain standards set by the OPD.

2. Project Objectives

Under Argersinger vs. Hamlin persons accused of any offense that has the potential penalty of a jail sentence must, upon request, be provided with legal representation at public expense - if they cannot feasibly secure this defense with their own means.

Up to the time the suburban cities began contracting with the OPD, the judges in the Justice Courts and the Renton Municipal Court assumed the responsibility of identifying from among all those who came before them persons who could be deemed indigent for public defense purposes and assigning them defense counsel. Judges could not allocate the time, nor did they have appropriate resources to adequately analyze applicants' backgrounds to arrive at a decision on the need for publicly financed attorneys. The procedure could in no way be expected to be standard throughout the numerous courtrooms. It could also be abused - either through subtle discouragement of persons seeking public defense assistance or through "over-assignments," whatever the motivation.

This section of the evaluation report deals with how well the project activities address the important responsibilities of creating and maintaining a fair judicial system for alleged misdemeanor offenders. Success criteria are specified for each of the four major objectives; a discussion of information relating to the criteria follows. Quantitative data are used when possible including detail case disposition information from cases where persons were charged with possession of marijuana, driving while intoxicated, or driving while license suspended. The number of persons screened and the lesser number of those determined indigent and given publicly financed counsel, however, are too few to yield statistically reliable information when broken out by offense category. Much of the discussion, therefore, simply comments on the quantitative data and attempts to seek out any inconsistencies or unexpected results.

Objective 1: To insure compliance with Argersinger vs. Hamlin by the suburban cities, i.e., to insure that defense council is provided, at public expense when necessary, to persons charged with an offense which under their ordinances might result in a jail sentence.

Success Criteria: The objective is determined to be met if (1) the judges hearing city cases or the law enforcement agencies of the cities use the referral services of the OPD; (2) if there are no valid complaints (upheld by the Court) by persons claiming to have been denied representation.

Discussion: The following table reports the number of persons who were referred, primarily by judges at arraignment (Appendix D), to the OPD for indigency determination.

Persons Screened for Indigency (with respect to ability to provide defense counsel) by the Office of Public Defense - 1974:

<u>City</u>	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>Total</u>
Bellevue	52	53	46	151.
Bothell	3	5	3	11
Kirkland	1	20	17	38
Redmond	NA	NA	3	3
Renton	14	20	17	51
Total	70	98	86	254

To be sure, persons requesting to be screened are a relatively small number when compared to those charged (there were 3,550 criminal cases and 24,353 traffic cases filed in the five cities in 1973), but no person has registered a complaint at the Court or through any City Clerk that he/she was denied representation.

From this information it can be inferred that the cities - given the straightforward procedures and the relatively minimal budget impact - have judicial cooperation and are complying with the Argersinger ruling.

Objective 2: To provide consistent, reasonable determination of indigency to persons accused of misdemeanors where they might, if convicted, be sentenced to jail.

Success criteria: Persons must have been charged with a violation of an Ordinance in one of the five participating cities. There are two effects that would be noted if the project activities are successfully addressing this objective: (1) the same standards of indigency are applied to all defendants requesting public defense representation, (2) the screening service is reasonably available to all defendants who consider themselves eligible for defender assistance.

Discussion: The following procedure is used for screening.

After a person is charged, usually at the arraignment proceedings but sometimes when a police officer is informing the alleged offender of his/her rights, the accused is made aware of the possible penalties for the offense and the right to have legal representation - at public expense if resources are not available to retain counsel. A referral is made (see Appendix D) to the OPD.

Persons desiring an attorney can be interviewed either at the main office in the Smith Tower or by the OPD interviewer who travels to the Bellevue and Renton courts one day each week.

A standard information sheet is completed for each applicant (see Appendix C) by a trained interviewer at OPD. Indigency determination is on a case-by-case basis, guided by the requirements of State v. Eide, including such variables as: seriousness of the charge, prevailing fees of attorneys, availability and convertibility of real property assets, outstanding debts and liabilities, past and present history, earning capacity and living expenses, credit standing in the community, family independence, other circumstances which may impair or enhance the persons ability to retain counsel.

If the configuration of the responses to the interview schedule indicates indigency and eligibility under the Argersinger requirements, an alleged offender is given the name of an attorney to represent him or her. The attorney is also notified that a client is assigned and the arraignment or trial date.

1) Criterion - Same standards of eligibility (indigency and eligibility under Argersinger requirements) for public defense services applied to all requesting assistance.

Prior to consideration of financial status of an applicant the OPD determines whether the charge is one that is officially sanctioned by a jail penalty and, if so, whether King County Courts ever levy that sanction. Practically, a person must be facing a criminal misdemeanor charge or a traffic charge of Driving While Intoxicated, Driving While License Suspended, or Physical Control (of a vehicle while drunk).

No attempt was made here to analyze the financial information found on the 254 interview forms for persons screened since the relationship among the variables used for this evaluation is a complex one. Decisions made by OPD on indigency are on a case-by-case basis, not by a straightforward rating system. There are data, however, which indicate that the OPD decision-making results in uniform standards.

Persons Determined Eligible for Publicly Paid Counsel
by the Office of Public Defense - 1974

<u>City</u>	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>Total</u>	<u>%**</u>
Bellevue	33	28	33	94	62
Bothell	0	2	0	2	18
Kirkland	0	11	5	16	42
Redmond	NA	NA	1	1	33
Renton	5	2	2	9	18
Total	38	43	41	122	48

** Per cent of those screened

Overall, nearly 50% of those persons who considered themselves eligible for publicly funded counsel actually received support. Of those rejected, fewer than 10% were turned down because their charges did not qualify; and over 90% because they had adequate financial resources.

Should a person be declared ineligible and question the decision, the OPD suggests they seek help from the Lawyer Referral Service. If that Service, using their own scale for evaluating the applicant's financial status, refuses to refer on to a private attorney, the OPD may reconsider its decision. This situation does not arise often, but does offer a rapid, practical check for an applicant, rather than appealing to a judge. As was noted under Objective 1, no person seeking representation under this project has appealed; only five challenges have been made of OPD screening decisions during the existence of the Office - all decisions were upheld by the Court.

2) Availability of screening service to all defendants who consider themselves eligible.

Practically 100% of the clients from the Eastside Public Defense project are interviewed in the downtown Office. Few people take advantage of the OPD interviewer who spends a day each week in Bellevue and Renton, e.g., only three persons were interviewed in Renton over 25 days at that court, 23 persons per 24 days in Bellevue, for a ratio of .53 people/day. Clients do not report problems with time or transportation to the Seattle Office. Residences and employment locations of defendants do not, of course, always correspond to the jurisdiction where they are charged.

Although many continuances or reschedulings are requested by the prosecutor, defendant, or the Court (see Objective 3) only two instances out of the 44 public defense cases investigated (those charged with one of the three targeted offenses) were delayed at the point of entering a plea or of trial because the accused had not yet "found" the OPD.

Objective 3: To provide quality legal service to those assigned defense counsel through the OPD.

Success criteria: Two results could be expected if the project activities are successfully addressing this objective: (1) the judicial process for the misdemeanor cases would be operating smoothly and with little delay, (2) case outcomes for public defender tried cases would be similar to outcomes for cases of the same charge without defender services (privately retained or no attorney).

One of the general assumptions about public defender services is that a better quality of legal service can be assumed if the interest of the local Bar Association is maintained. In this project a balance was established between a public defender firm which could handle many similar cases efficiently and keep costs down and the private Bar whose members agree to be listed with OPD and serve periodically. Fees are the same for either type representation.

During the planning for the Eastside Public Defense Project, the King County Bar was represented by members practicing in communities east of Lake Washington. A joint effort by the Bar, City and County Planning staffs, and City Attorneys' Offices resulted in the incorporation of the Eastside Defender Association located in Bellevue. The majority of public defense cases assigned are handled by the firm (88), with the private bar serving on cases (34) at times of heavy caseloads (to avoid calendar conflicts and unwarranted trial delays) or in cities other than Bellevue where travel time might be extensive.

The flow of cases through the Eastside Defender Association follows this outline:

- a. After the indigency-determination interview and the assigning of Counsel, the OPD contacts the firm for the client giving information on name, charge, court date.
- b. The defendant is expected to contact the Eastside defender and 80-85% do call for an appointment. If no timely contact is made (considering attorney schedule and required court appearances), both telephone and letters are used to initiate defender services.
- c. If no arraignment has yet been held, that appearance is waived and a trial date set.
- d. A client/attorney conference is held; this is done far enough in advance so followup investigation, interviewing of arresting officers, witnesses, etc. can be conducted before trial.
- e. Attendance and defense at trial follows.
- f. Often the client is found guilty of the original or a lesser charge and a presentence report is requested by the judge. The attorney is available at the sentencing, approximately six weeks after the trial.

Estimates by the OPD and the Eastside Defender Association for time spent on each case range from 4.2 hours (private bar, misdemeanor cases not covered by this project are included) to 3-4 hours, respectively. Interviews before trial consume about 1 hour, trials also about 1-1.5 hours. However, only 15-30 minutes of in-court time are actually spent on the case, the remainder being waiting time while other cases are heard. The Eastside Defender Association reports that cooperation of the judiciary has been excellent in setting calendars to avoid conflicts with cases at other courts or to combine public defense cases on a single calendar to avoid extensive

waiting periods. Nevertheless, since other defendants and clients are also in attendance at the time court convenes, the daily calendars cannot be expected to continually give precedence to these public defense cases.

It was stated early in this report that the small number of public defender cases precluded any valid statistical analysis of the data. An attempt was made, however, to investigate all the representation provided to persons charged with possession of marijuana (criminal offense), DWI, or DWLS (traffic offenses). These three offense categories have the highest number of cases (48) with the remainder (74) scattered among shoplifting, petit larceny, disorderly conduct, minor possession/illegal possession of alcohol, and numerous others.

The discussion that follows is based on the Justice Court records on these selected 48 cases, at times being compared with a sample of cases of the same charges filed in the Bellevue Justice Court by the City of Bellevue (a total of 143 cases).

1) Criterion - Expeditious operation of the judicial process in public defender misdemeanor cases.

Interviews with court staff, the Eastside Defender Association staff, and the OPD revealed no problems in the flow of public defender cases through the appropriate Courts. Often when a case was handled by an attorney assigned from the private bar instead of the Eastside Defender Association, Court staff was not aware that it was a publicly paid attorney rather than a privately retained attorney.

For the specific offenses investigated during preparation of this report (possession of marijuana, DWI and DWLS), continuances

requested by the attorney, the prosecutor, or calendar changes by the Court - most were from the defense counsel - can be compared between publicly paid and other cases.

Continuances Requested from Arraignment through Sentencing

<u>Type of Case and Representation</u>	<u>Continuances</u>	<u>Number of Cases</u>	<u>Continuances/Case</u>
<u>Possession of MJ</u>			
Publicly Paid	7	19	.37
Privately Retained	2	13	.15
No Counsel	6	32	.19
<u>DWI</u>			
Publicly Paid	7	12	.58
Privately Retained	39	44	.89
No Counsel	9	14	.64
<u>DWLS</u>			
Publicly Paid	12	13	.92
Privately Retained	8	7	1.14
No Counsel	7	33	.21
<u>Totals</u>			
Publicly Paid	26	44	.59
Privately Retained	49	64	.77
No Counsel	22	79	.28

Probably because the sample size is small, no consistent pattern emerges from the information on continuances although, overall, those cases with private attorneys have a greater number of continuances and those cases without attorneys have the fewest. The public defender cases appear to be similar to other misdemeanor cases filed in these Courts, leading to the conclusion that the persons represented by a public-financed counsel are experiencing expeditious judicial processing.

2) Criterion - Disposition of public defender cases contrasted with other cases of the same charges.

Any discussion on this point must be considered tentative for two

reasons. First, as has been stated earlier, the sample size of the cases accepted by the OPD is very small. Second, there was no matched sample from cases with either privately retained counsel or no counsel. This means that an assumption is being made with respect to cases having publicly supported defense and other cases which may not be entirely reasonable that the only difference between these two categories of cases is the financial status of the defendants. A cursory look at publicly paid case records indicates that these defendants appear more likely to be multiple offenders; the Eastside Defender Association reports that the majority of its clients are younger than the average defendant. The effects of the possible differences between groups being compared cannot be predicted, of course, but the reader should keep these cautions in mind.

Of the total number of cases investigated (187), only five dispositions contained jail sentences which were not suspended: four persons charged with possession of MJ represented by assigned counsel and one person charged with DWLS who had no attorney. One of the assigned counsel cases was a second offense in a short period of time; one other gave credit for time already served before sentencing, thus, no additional penalty was really imposed.

Three cases were appealed for trial de novo in Superior Court: one person convicted of possession of MJ represented by assigned counsel (a case where a jail sentence had been imposed) and two persons convicted of DWI represented by privately retained attorneys.

Other dispositions on which the public defender cases can be compared with private or no attorney cases are reported on in the table below. As with the reporting of continuances, no statistical

tests were performed to analyze differences, the raw data are simply listed.

Case Dispositions: Assigned Counsel Compared with Other Cases with Similar Charges.

<u>Type of Case and Representation</u>	<u>Total</u>	<u>Dismissed</u>	<u>Reduced Charge</u>	<u>Convictions</u>	
				<u>Probation</u>	<u>Deferred Sentence</u>
<u>Possession of MJ</u>					
Publicly Paid	19	5	2	7	2
Privately Retained	13	6	0	2	3
No Counsel	32	1	1	27	1
<u>DWI</u>					
Publicly Paid	12	2	1	3	0
Privately Retained	44	4	12	6	4
No Counsel	14	1	2	4	0
<u>DWLS</u>					
Publicly Paid	13	4	3	0	1
Privately Retained	7	1	0	0	0
No Counsel	33	6	2	2	4

Again, no pattern emerges from these data. Persons represented at public expense appear to be experiencing case dispositions at least as favorable to the defendant as those with either a privately retained counsel or no attorney.

Objective 4: To provide the most cost-effective defense of persons charged with misdemeanors and judged indigent.

Success criteria: The expenditures per case by the cities would have had to be reduced or at the same level (with consideration for general inflation) under the project when compared to preproject costs.

Discussion: The suburban cities participating in the Eastside Public Defense project had had relatively limited experience with Argersinger prior to the initiation of the project. The procedures for assigning counsel varied among Courts and the different cities

had negotiated various arrangements with local attorneys to take cases for set fees. The exception was the City of Bellevue, where attorneys' charges appear to have been based on their regular fee schedule.

For the participating cities calendar year 1973 (not including a brief, trial contract period with OPD late in the year) produced the following costs in complying with Argersinger:

	<u>Number of Cases</u>	<u>Average Cost/Case</u>	<u>Total Expenditures</u>
Bellevue ¹	93 ¹	\$99.70	\$9,275
Bothell	1	\$83.00	83
Kirkland ²	12	\$75.00 (\$125 max.)	1,000
Redmond ³	15	\$75.00	1,125
Renton ⁴	12 (max.)	\$25.00	300

1. Estimated by attorneys handling the City's cases.
2. Contract with private attorney.
3. January-September 15, 1974; contract with private attorney.
4. The funding level determined the number of cases to be provided counsel through city reimbursement.

Out-of-pocket costs are not reduced for three cities: Bothell, Kirkland or Redmond. Renton's costs are up. But persons charged in their municipal court are, through the contract with OPD, assured of representation since the city has agreed to pay for all requiring representation under Argersinger, not only for those who were charged before the budget was exhausted. The routinization of screening/ public defender services with its fixed fees has benefited the City of Bellevue, bringing the average cost of a case down somewhat from \$99.70.

RECOMMENDATIONS

No recommendations for major changes of project policy or procedures were generated during the preparation of this report. However, two procedural modifications could be implemented to increase project efficiency.

1. Institute a procedure whereby the individual cities confirm that counsel was provided to the defendant.

The OPD charges the cities only for cases assigned counsel, not for cases screened. That charge is made at the time of assignment. If for some reason the attorney/client do not make contact, the City is still billed as though representation was provided. It would be a relatively simple matter to have the Justice Court Clerk responsible for city filings do a quarterly review of assigned-counsel cases using the invoice submitted by OPD. A double check on public defense cases thus would result, since OPD receives a case disposition report from the attorneys assigned the case.

2. Either reschedule or eliminate the interviewer station at the Bellevue and Renton courts.

So few potential public defender clients "find" the interviewer at these Eastside courts, the staff time spent there cannot be justified. It may be a scheduling problem; since most people are informed of their eligibility at arraignment, if the OPD interviewer were in the Court on that day (the same day each week in Bellevue) the numbers interviewed there might increase significantly. Should this rescheduling not be possible, the OPD could be available on the Eastside through an "on-call" arrangement for defendants with prohibitive time/transportation problems.

END

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