



Northwest Regional Council

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Implementation of Basic Juvenile Court Act Hinders Efficient Management of Whatcom County Assigned Counsel System

Executive Summary of the Evaluation of Assigned Counsel System
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Summary of Findings

- * As the title suggests the implementation of the Basic Juvenile Court Act in July of 1978 has had a deleterious effect on the Assigned Counsel Department. A massive increase in the number of potential clients, heightened by an unusual reduction in the amount of funds available and a weak eligibility determination system in the Juvenile Court, all combined to cause disbursements to exceed the budget by approximately 31%.
- * District and Superior Court costs were well within expected parameters despite sizable increases in the number of appointments made. Average claim costs in these courts were also lower than in the preceeding year.
- * There does not seem to be any differences in the acquittal/dismissal rates between Assigned and privately retained counsel.
- * The Assigned Counsel Department Director is currently considered a County employee. There presently exists little interaction between the program, users, attorneys or local decision-makers. This situation needs to be remedied via the establishment of an ACD Advisory Board comprised of representatives of each of these relevant interest groups.
- * The fee schedule now in use needs revision. Instead of basing disbursements on attorney hours worked and/or a flat fee, one method or the other should be adopted. The hourly rate of \$30 may be more acceptable in the long run. A fee schedule needs to be drawn up for juvenile court cases as one presently does not exist.
- * Eligibility criteria established for adults need to be followed in the Juvenile Court.

Research Methods

This research makes extensive use of existing data sources. The Whatcom County Auditor's disbursement ledger was consulted for expenditure data back to 1974. This data, collected on a monthly basis, was used to predict during ACD expenditures. The use of regression techniques made available apparent trends in the data that could be used for comparison with during-ACD expenditure trends. All prediction equations were so mathematically precise that our predictions came very close to reality.

The Superior Court and District Court, through their monthly reports to the Administrator for the Courts, provided excellent data on coverage and, in the case of Mental Health and Juvenile Court hearings, an approximate comparison of commitment rates.

The Whatcom Prosecutor's Office annual reports provided comparative data in regard to acquittal/dismissal rates.

The remaining data was found within the files of the Assigned Counsel Department. This data included charges, pleas, dispositions, attorney hours spent on case, amounts requested and amounts paid. Further, financial affidavits signed by all potential clients were examined and income data extracted for the analysis.

A survey is being sent out to defense service recipients. The results from this will be made available later.

Project Implementation

This project in Whatcom County is the third assigned counsel type system funded by the Law and Justice Planning Office of the Northwest Regional Council. The other two, in Skagit and Island counties, have terminated their LEAA contracts and been institutionalized by the local governments in those jurisdictions.

The Assigned Counsel Department in Whatcom County consists of a Director, responsible for eligibility determinations and appointments, and a part-time recoupment specialist who also answers the phones. The total administrative budget for this project consists of \$19,819 in federal monies, and \$2,202 in state and local match. Both employees are considered Whatcom County employees. Funds for defense services are supplied by Whatcom County.

Although the original grant application states that the project "supports and adopts the conclusions and recommendations of the Washington State Bar Association's 1975 report on "Methods of Providing Representation for the Indigent Criminal Accused" it actually varies significantly from those recommendations.

To begin with the ACD director in Whatcom County is directly responsible to the County Commissioners. The Bar Association recommended that any "system of providing defense counsel for indigent criminal accused should be operated through a non-profit corporation whose board of directors include representatives of local government, the Bar, and the community served, especially low-income and minority groups". As the ACD is presently set up, the only contact with the Commissioners is at budget time or when requesting emergency appropriations should the budget be overspent. Presently, contact with local attorneys is via vouchering and the claim process. There is presently no advisory contact with either the community or other groups. The system now established is able to provide little direction to the administration of this project. There are a number of issues that present themselves periodically that could be best dealt with by a larger, more representative advisory structure; attorney participation needs to be increased (less than one-third participate now), fee schedules need to be revised, the question of the legality of recoupment has yet to be fully resolved. These issues require a wider base for resolution. The present system is adversary in nature when it should be more of a shared, symbiotic decision-making process.

The use of an assigned counsel administrator has the potential for a number of improvements in the provision of public defense services. The ACD director is paid less per hour in making appointments than are District or Superior Court judges. Further, the ACD director may save some funds through the elimination of inappropriate provision of counsel. Certainly, since administrative costs are presently borne by LEAA, the actual costs to Whatcom County for administrative services is only \$1,101.

The recoupment specialist is responsible for notifying convicted defendants of their obligations, establishing a repayment system, reminding clients of payment lapses and recording payments. The specialist has constructed an involved process for recoupment collection consisting of original and follow-up letters.

The project does not provide funds for the compensation of attorneys challenging manifest abuses within the criminal justice system. Funds are also not available for attorney research.

Disbursements

The amounts of money budgeted by Whatcom County to indigent defense services reveal yearly increases between 1974 and 1977 averaging 24.6%. The 1978 amount budgeted, \$117,000, was the first year that the budgeted amount decreased, in this case by 17.8% from 1977. If the typical increase in budgeted amounts had been continued into 1978, the amount of money available for defense services would have been \$179,965.

Actual disbursements in Whatcom County for defense services had been increasing between 1974 and 1977 at an average rate of 23.8%. Between 1977 and 1978 this disbursement total reached \$153,219.24, an increase of 25.6%. Between 1974 and 1977, the increases in budgeted amounts and disbursements were logically comparable. In 1978, despite the obvious trend in the data, the budget amount available was reduced to 1976 levels while disbursements continued their very predictable increases. The gross result was a deficit of some \$36,219.24. Had the indigent defense budget increased in 1978, as it had between 1974 and 1977, there would have been a gross balance of \$26,745.76. Consequently, the ACD director has had to make two emergency appropriations requests, the first since 1975.

Indigent Defense Budgets and Disbursements

<u>Year</u>	<u>Amt. Bud'ed</u>	<u>Change</u>	<u>Amt. Disemb'ed</u>	<u>Change</u>
1974	\$74,000		\$69,161.58	
1975	98,035	+32.5%	109,249.36	+58%
1976	112,566	+14.8%	100,226.85	-8.2%
1977	142,377	+26.5%	122,008.71	+21.7%
1978	117,000	-17.8%	153,219.24	+25.6%

Defense costs in the Juvenile Court are up during 1978 by almost 55%. In the District Court, costs are up by only 6% while in the Superior Court costs increased by less than 12%. The total dollar amount of disbursements in the Juvenile Court, \$26,038.23 was actually greater than defense costs in the District Court.

DISTRICT COURT

JUVENILE COURT

SUPERIOR COURT

<u>Year</u>	<u>Disbursements</u>	<u>Change</u>	<u>Disbursements</u>	<u>Change</u>	<u>Disbursements</u>	<u>Change</u>
1974	\$ 5,849		\$ 6,459		\$45,830	
1975	12,027	+106%	13,658	+111%	79,174	+73%
1976	18,411	+ 53%	22,271	+ 63%	72,276	- 9%
1977	22,551	+ 22%	16,808	- 25%	88,624	+23%
1978	23,921.12	+ 6%	26,038.23	+ 54.9%	98,699.81	+11.4%

In the District and Superior Courts, actual disbursements for defense services come very close to the expected expenditure levels. Using the trends established between 1974 and 1977 and using the number of claims submitted during this period as the criterion variable, it was predicted that 1978 disbursements should have reached \$29,393.09 in the District Court and \$98,948.93 in the Superior Court. Actual expenditures during 1978 were \$23,921.12 in the District Court and \$98,699.81 in the Superior Court. In both cases, then, actual expenditures were within pre-existing trends and should actually come as no surprise. The ACD project seems, in this case, to have effected no noticeable change in expenditure levels though District Court costs are almost \$6,000 less than expected. This was not the case, however, in the Juvenile Court. Expected disbursement levels in this court were \$24,463.19 while actual expenditures were \$26,038.23.

1978 Disbursements, Expected and Actual

<u>Year</u>	<u>DISTRICT COURT</u>		<u>JUVENILE COURT</u>		<u>SUPERIOR COURT</u>	
	<u>Expected</u>	<u>Actual</u>	<u>Expected</u>	<u>Actual</u>	<u>Expected</u>	<u>Actual</u>
1978	\$29,393.09	\$23,921.12	\$24,463.19	\$26,038.23	\$98,948.93	\$98,699.8

If we need a quick explanation for the Project not staying within its \$117,000 budget several factors seem to present themselves. First, the 17% reduction in the money available for defense services in 1978 precluded all change of the ACD staying within its allocation. Second, the implementation of the Basic Juvenile Court Act has triggered an estimated 124% increase in the number of juvenile court hearings, the majority of which require client representation, a large proportion of which are publicly financed. Finally, eligibility determinations in the Juvenile Court have not

been of the same quality as those in the District and Superior Courts.

Claims

In all courts there has been a sizable increase in 1978 in the number of claims for defense services. The District Court revealed an increase of 74%, the Juvenile Court an increase of 48.2% and the Superior Court an increase of 37.7%. Overall, there were 670 claims honored in 1978, a 62.6% increase over 1977. Such significant increases in the number of claims during 1978 would seem to suggest a weakness in the ACD eligibility determination process.

Claims for Defense Services

<u>Year</u>	<u>District Crt.</u>	<u>Change</u>	<u>Juvenile Crt.</u>	<u>Change</u>	<u>Superior Crt.</u>	<u>Change</u>
1974	54		49		165	
1975	106	+96.%	78	+59.%	187	+13%
1976	158	+49.%	89	+14.%	195	+ 4%
1977	123	-22%	85	-4.5%	204	+ 5%
1978	214	+74.%	126	+48.2%	281	+37.7%

One potential rival hypothesis explaining increased claim numbers in all courts is that the number of persons charged has increased correspondingly. Data from the Administrator for the Courts suggests that this is not a plausible assumption.

<u>Year</u>	<u># of Persons Charged</u>	<u>Change</u>	<u># of Claims</u>	<u>Change</u>
1974	1373		268	+38.4%
1975	1469	+7.0%	371	+19.1%
1976	1512	+10.1%	442	-6.8%
1977	2121	+40.3%	412	+62.6%
1978	2237*	+5.5%	670	+62.6%

* Projected

Whereas the number of persons charged increased by 5.5% from 1977 to 1978, claims increased by 62.6%. Changes in the number of persons charged cannot, therefore, be used as an explanation for increasing numbers of claims.

Eligibility

Up until October of 1978 the Assigned Counsel Director had turned down 236 defendants requesting public representation. This figure is comprised of 97 defendants from the Superior Court (15.2% of those requesting services), 130 defendants in the District Court (20.4% of those requesting services), and 9 in the Juvenile Court (1.4%). Apparently the District Court has the greatest "turn-down" rate and the Juvenile Court the lowest.

Apparently, the courts with the greatest turn-down rates are the courts that kept within their expected budgets. We have already seen that the District Court was the furthestest from overspending its budget; this court also had the greatest turn-down rate. Conversely, the Juvenile Court, producing the lowest turn-down rate, went the furthestest over its expected budget.

Five variables have been investigated to determine which best explains whether counsel is appointed or refused adult defendants. These variables are:

- 1) Whether the defendant was working;
- 2) Whether the defendant has dependents;
- 3) Whether the defendant was released or detained pre-trial;
- 4) The amount of assets the defendant had;
- 5) The difference between a defendant's monthly income and liabilities.

A series of correlation coefficients were generated for each variable. The first three were dichotomous nominal scale correlations while the last two were point biserial correlations. (see above for order). The following chart reveals the priority order of these five variables as they relate to whether the defendant received an attorney at the public's expense.

<u>Priority</u>	<u>Variable</u>	<u>Relationship Classification</u>
1	Difference in defendant's monthly income & liabilities	High
2	Whether defendant was working	High
3	Defendant's Assets	Substantial
4	Whether defendant had dependents	Present but slight
5	Whether defendant was detained pre-trial	Negligible

The order found among these variables seems logical in regard to how they should influence the eligibility decision.

It was found that defendants who were declared not eligible for public representation averaged \$362.50 in income per month after expenses. Defendants receiving defense services from ACD averaged \$5.72 per month after expenses.

Of 85 clients sampled from the District and Superior Courts, 43 were eligible for defense services. Of that number 12 or 27.9% were working. Of some 42 defendants found to be not eligible for defense services, 33 or 78.6% were working. The relationship between the working/not working dichotomy and the defendants income after expenses is obvious.

Employment Status and Eligibility

Defendant:	<u>Eligible</u>	<u>Not Eligible</u>	<u>Total</u>
Working	12	33	45
NOT Working	<u>31</u>	<u>9</u>	<u>40</u>
Total	43	42	85

The third most important variable was the defendant's assets. These assets ranged from stereos and automobiles to real estate and checking accounts. Clients found to be NOT eligible averaged some \$2,199.03 in assets while defendants found to be eligible averaged \$751.18 in assets. As in the case of monthly income, eligible defendants seemed to have a greater outgo than income.

Whether a defendant had dependents did not seem to be related to whether that defendant received public defense services from the ACD. Of 33 clients who had dependents, 19 or 57.6% were declared eligible. Of the 52 clients who did not have dependents, 24 or 46.2% were declared eligible. Though this finding does favor defendants with dependents, it does NOT do so to a significant degree.

Dependents and Eligibility

Defendant:	<u>Eligible</u>	<u>Not Eligible</u>	<u>Total</u>
Has Dependents	19	14	33
No Dependents	<u>24</u>	<u>28</u>	<u>52</u>
Total	43	42	85

The final variable examined reveals that the defendant's pre-trial custody status has no apparent effect on the eligibility decision. This may be slightly misleading since we already know that turn-downs occur proportionately more often in the District Court than in the Superior Court (20.4% versus 15.2%). Pre-trial custody may be more indicative of the immediate dangerousness (perceived) of an offender. Of 31 defendants subsequently found to be eligible for defense services, 14 or 45.2% were released pre-trial. Of fourteen defendants found NOT eligible, seven or 50% were detained pre-trial.

CUSTODY AND ELIGIBILITY

Defendant:	<u>Eligible</u>	<u>Not Eligible</u>	<u>Total</u>
Released	14	7	21
NOT Released	<u>17</u>	<u>7</u>	<u>24</u>
TOTAL	31	14	45

A sample of 21 Juvenile Court financial affidavits of eligible clients revealed an average monthly income of parents of juveniles receiving assigned counsel of \$604.14. This monthly income ranged from a high of \$1,250 per month to zero dollars per month. Monthly liabilities for this group averaged \$578.56 with a high of \$1,396.60 to a low of zero. This difference between these two figures is \$25.58 on the average per month.

Clients averaged -\$742.64 in assets, in other words, these clients were in debt by that amount. In 8 or 21 cases (38.1%) the parents were employed; the remaining 61.9% were unemployed at the time of the eligibility interview. A large proportion of these clients were receiving welfare benefits.

These clients averaged 2.71 dependents each, with the total ranging from six to 0. Of the juveniles themselves, 62.5% were released on their personal recognizance while 37.5% were detained pre-trial. (delinquency hearings only). Approximately 62.5% of these hearings were for delinquency reasons, 18.8% for dependency reasons, and 18.8% were shelter care hearings.

The use of financial affidavits in the Juvenile Court has not been routinized as it has in the Adult Courts. In some instances the affidavits were filled out on the child while in others it was done for one or both parents. There seems to be a tendency to appoint counsel for juveniles whenever in doubt. The new juvenile code certainly increases the probability of any given client requiring representation. There are special difficulties in determining eligibility among juveniles. The custody question has first to be determined after which financial eligibility is established. With adults the finances of the defendant are examined solely. For juveniles there are a number of different potential financial sources. If the child is emancipated and working this child's resources are monitored. Perhaps the

child is living with relatives, or in a group home. At this time, the state may be financially responsible for the child. The many possible scenarios seem to lead to the "when in doubt, appoint" method characterizing 1978 juvenile court statistics. To further complicate appointments and costs associated with the juvenile court, there exists no suitable fee schedule for the majority of juvenile court case types.

The Effects of Too Many Claims

The obvious effect of granting perhaps too many defense appointments was the Project's inability to stay within its budget. Another impact was in the average cost of a claim in each of the three courts. In the District and Superior Courts average claims costs decreased; by 38.9% to \$111.78 in the District Court and by 19.1% to \$351.24 in the Superior Court. Continuing to be a source of consternation for this Project, Juvenile Court costs per claim increased by 3.7% to \$205.03. Despite significant increases in the number of claims, average claim costs, at least in the Superior and District Court, have been reduced. Apparently, in these courts the ACD project is getting more services for the money.

The method by which these costs have been kept partially in check involves a rather elaborate adjusting procedure used by the ACD director. During 1978, he managed to adjust Superior Court claims downward by 41.7% from the amounts requested by appointed attorneys. In the Juvenile Court the ACD director adjusted attorney claims downward by 35.4% while the adjustment rate in the District Court was 46.5%. Again, the Juvenile Court data reveals the least amount of control by the ACD project.

It would behoove the ACD to write up and disseminate a list of flat fees, allowable costs and a written synopsis of the reimbursement structure for local attorneys. The structure as it now exists allows the ACD director a tremendous amount of leeway in determining expenses. These policies, however, need to be formally written and presented to the Bar for input. These procedures should also include a requirement that claims be submitted to the ACD by attorneys within 30 days of case disposition. Presently, claims are presented in an undisciplined manner thereby significantly detracting from the timelines with which claims are honored. Further, this process inhibits budgeting on the part of the ACD director.

We have already seen that the ACD director has adjusted downward by some 41.7% the dollar amount of claims from attorneys in the Superior Court. In those instances when the ACD director receives vouchers from attorneys for amounts greater than the set fee schedule calls for, he adjusts vouchers by referring to the \$30 per hour rate established in the Superior Court. Local attorneys bill the ACD at a rate of \$50 per hour.

There does seem to be a wide range of variation in the number of hours attorneys spend on cases as classified by that case's disposition. Cases going to a trial and ending as an acquittal or a finding of guilty as charged consumed the greatest amounts of attorney time, on the average 35.85 hours and 29.12 hours respectively. Therefore, acquittals are the most expensive disposition, \$1,075.50, followed closely by guilty as charged, \$873.60. This has great import as regards recoupment since attorney fees cannot and are not recollected from defendants found not guilty. The following chart reveals average attorney time and claim costs per disposition type.

Superior Court

<u>Disposition</u>	<u>Average Attorney Hours</u>	<u>Average Cost</u>
Acquittal	35.85	\$1,075.50
Guilty as Charged	29.12	873.60
Dismissed	20.47	614.10
Guilty to Reduced Charges	20.02	600.60
Plea of Guilty	11.65	349.50

Guilty pleas require the least amount of attorney time and consequently the lowest amounts of funds. What is particularly interesting is that all of these average costs are greater than the flat fee schedule established within the ACD. Guilty pleas are scheduled for a flat \$225, thereby assuming an average attorney time spent of 7.5 hours. Out of a sample of 30 Superior Court cases where the defendant pled guilty, nine (30%) revealed that the attorney did spend 7.5 or less hours on the case.

On the average, attorneys assigned to cases in the Superior Court request some \$200.87 more per claim than the \$30 per hour limit allows based upon the number of hours they spent on a case. The ACD director, on the other hand, authorizes on the average, some \$71.53 less per claim than the \$30 per hour limit allows. In 3 out of 41 Superior Court cases, assigned attorneys requested less money than the hourly rate would permit. In 15 out of 41 cases in the Superior Court the ACD director paid out more money in claims than the hourly rate would permit. Though both figures are significantly different from zero (signifying complete adherence to the hourly rate), the ACD dollar figures are much closer. This data may be indicative of confusion on the part of local attorneys in regard to what the fee schedule actually is. Indeed there is no appropriate fee schedule for juvenile court case types. Without a formal network established between the ACD and local attorneys there is little means for communicating allowable costs. Apparently, the cost parameters established by the ACD are unknown, by and large, to local attorneys.

Efficiency

To generally assess effectiveness acquittal/dismissal rates have been generated for the District and Superior Courts and commitment rates generated for the Juvenile Court and Mental Health hearings. The base line figures are derived from the Whatcom Prosecuting Attorney's annual reports and from Administrator for the Courts reports.

In the District Court, the acquittal/dismissal rate has ranged from a low of 9.3% in 1976 to a high of 26.1% in 1974. Between 1967 and 1976, in the District Court the acquittal/dismissal rate averaged 15.5%. During 1978, the period in which the ACD ran, this rate changed negligibly to 14.9%

The Superior Court acquittal/dismissal rate has ranged from 36.8% in 1971 to 16% in 1969. The overall rate for this period, 1967 to 1976, was 24.9%. The during ACD acquittal/dismissal rate has been 22.6%, again not significantly different from the earlier base-line rate.

In both of these courts, since the implementation of the ACD program, there have been no real changes in this measure of effectiveness.

Commitments resulting from Juvenile Court hearings have ranged from 10.1% in 1975 to 5.4% in 1973. The overall commitment rate between 1972 and 1976 has been 7.5%. Since implementation of the ACD in 1978 this rate has changed to 10.1%. This slightly higher rate may be a function of new, mandatory sentencing guidelines for serious juvenile court criminal cases.

Mental health hearings resulting in commitment have ranged from 70% in 1975 to 53.1% in 1973. The 1978 rate has been 100%, when all mental health hearings resulted in commitment.

The increases in proportion of commitments in the Juvenile Court and in mental health hearings are no doubt influenced by a number of factors. The Basic Juvenile Court Act affecting juvenile commitments. A very stable trend in the number of mental health hearings may be indicative of the filing of "better" or more unequivocal mental health cases. On top of this, these two courts are analyzed for only 8 months of 1978. Four months remain to be investigated.

Recoupment

Recoupment within the Assigned Counsel Department during 1978* has totaled \$7,632.12. This is an average of \$636.01 per month in 1978. In August some \$383.15 was paid back by clients receiving defense services. The largest amounts of money being paid back are coming from District Court clients. These people have paid back some \$5,289.96 for a monthly average of \$440.83. Superior Court clients have paid back \$2,197.19 for a monthly average of \$183.10. The money paid back in the District Court represents 204 individual payments for an average payment of \$25.93. In the Superior Court 77 payments have been made for an average payment of \$28.53. Juvenile Court repayments have totaled 7, encompassing \$145 for an average payment of \$21.00. The overall average payment consists of \$26.50. Some \$55,021.71 or approximately 47.2% of the total 1978 disbursement of \$116,453.53 is considered recoupable. Of this amount some \$7,632.12 has been collected already. This amounts to 13.9% of the recoupable amount.

During 1977, the District Court clerks collected \$1602.50 in recoupment from convicted defendants. On a courtesy basis, during 1978, the District Court has collected \$1655.48. This amount is 31.3% of the total District Court recoupment collected by the ACD recoupment specialist.

* As of December 20, 1978

1978 Recoupment Activity

<u>Month</u>	<u>ACD</u> <u>District Ct.</u> <u>Recoupment</u>	<u>ACD</u> <u>Superior Ct.</u> <u>Recoupment</u>	<u>ACD</u> <u>Juvenile Ct.</u> <u>Recoupment</u>	<u>District Ct.</u> <u>Clerk Recoup.</u>	<u>Total</u>
January	100	25	0	220	345
February	45	135	0	335	515
March	45	225	0	160	430
April	488.5	175	0	50	713.5
May	597.45	122.5	0	180	822.45
June	335.	215.75	0	30	580.75
July	433.75	120.79	5	300.51	860.05
August	840.	543.15	0	60	1,443.15
September	454.	240.	45	160	899
October	805.	100	25	133.2	1,063.20
November	972.	240	40	26.77	1,278.77
December	174.25	55	30	?	259.25
Total	\$5,289.96	\$2,197.19	\$145	\$1,655.48	\$9,287.63
Percent	57.0%	23.7%	1.6%	17.8%	100.%

Mental Health Hearings

During this period examined in 1978, there were 48 claims submitted to the Assigned Counsel Director for attorney services in Mental Health hearings. April and November recorded the single greatest total with 8 claims. Disbursements for services totaled \$4,560.08. This dollar figure is some 15.3% less than the total requested by attorneys.

Mental Health Hearings

<u>Months</u>	<u>Number of Claims</u>	<u>Disembursed</u>
January	1	\$ 150
February	6	535
March	8	962.50
April	4	315
May	0	0
June	5	598.75
July	6	693.25
August	1	120
September	1	66
October	2	190
November	6	3,630.50
December	8	504.58
Total	48	425.
		\$4,560.08

END