

THE HONORABLE

IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

COLLEEN DAVISON, legal guardian for K.B.,
a minor, on behalf of themselves and others
similarly situated and GARY MURRELL,

Plaintiffs,

v.

STATE OF WASHINGTON and
WASHINGTON STATE OFFICE OF PUBLIC
DEFENSE,

Defendants.

No.

**CLASS ACTION COMPLAINT FOR
DECLARATORY RELIEF**

INTRODUCTION

1. This is a class action brought pursuant to the Declaratory Judgment Act (Chapter 7.24 RCW), the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 3 and 22 of the Washington State Constitution, on behalf of all juveniles charged with offenses under RCW 13.40 in the Grays Harbor County Juvenile Court who have the constitutional right to appointment of counsel for their defense.

2. Almost exactly fifty years ago, on May 15, 1967, the U.S. Supreme Court held that juveniles facing “delinquency” proceedings (now in Washington called juvenile offenses

1 under RCW 13.40) not only possess the same right to counsel as adults, but have a greater need
2 for counsel than adults. *In re Gault*, 387 U.S. 1, 87 S. Ct. 1248, 18 L.Ed. 2d 527 (1967) (juvenile
3 right to counsel based on 14th Amendment due process); *see also Gideon v. Wainwright*, 372
4 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799, 93 A.L.R.2d 733 (1963) (6th Amendment right to
5 counsel). “[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone”; thus,
6 children have, at a minimum, the same constitutional right to counsel and to due process as
7 adults. *Gault*, 387 U.S. at 13. The Washington State constitution contains the same fundamental
8 protections. Wash. Const. art. I, § 3 (due process); Wash. Const. art. I, § 22 (right to counsel).
9 *See also* RCW 13.40.140 (recognizing juveniles’ right to counsel); RCW 10.101.020 (same);
10 JuCR 9.2(d) (same).

11 3. If anything, the right to counsel is even more important for children than adults
12 because children generally cannot advocate for their own legal rights or make decisions about
13 what is in their best interest without guidance. *See, e.g., J.D.B. v. N. Carolina*, 564 U.S. 261,
14 272, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011); *Vovos v. Grant*, 87 Wn.2d 697, 700-01, 555
15 P.2d 1343 (1976); *see also State v. A.N.J.*, 168 Wn.2d. 91, 225 P.3d 956 (2010).

16 4. State law explicitly requires legal representation for children “at all critical stages
17 of the proceedings,” including any proceeding in which the child faces the possibility of being
18 confined. Wash. Const. art I, §§ 3 and 22 (state constitutional right to due process and right to
19 counsel); *State v. A.N.J.*, 168 Wn.2d. 91 (discussing juvenile’s right to counsel in offender
20 proceedings); RCW 10.101.005; RCW 13.40.140; JuCR 9.2(d) and JuCR 9.2 Standards.

21 5. These clearly established constitutional rights are being violated in the state of
22 Washington. As a direct result of systemic and structural deficiencies known to Defendants,
23 juvenile public defense services in Grays Harbor County operate well below the constitutionally
24 required minimum of subjecting the prosecution’s case to “the crucible of meaningful adversarial
25 testing.” *United States v. Cronin*, 466 U.S. 648, 656, 659, 104 S. Ct. 2039, 80 L. Ed. 2d 657
26 (1984) (unless a lawyer provides meaningful assistance, “there has been a denial of Sixth
27

1 Amendment rights that makes the adversary process itself presumptively unreliable”); *Wilbur v.*
2 *Cities of Mount Vernon & Burlington*, 989 F. Supp. 2d 1122, 1130 (W.D. Wash. 2013).

3 6. In the Grays Harbor County juvenile public defense system, despite a lawyer
4 having been appointed to represent a child accused of an offense, the absence of advocacy and
5 adversarial testing results in the functional equivalent of pre-*Gault* proceedings where there was
6 no right to counsel at all.

7 7. Plaintiffs seek declaratory relief against Defendants the State of Washington and
8 the Washington State Office of Public Defense (“OPD”), to remedy the persistent violation of
9 the constitutional right to counsel that children, including Plaintiff K.B. and the Class members,
10 have suffered and will continue to suffer unless the relief requested is ordered.

11 8. Serious ongoing harm is being inflicted on children as a result of the
12 constitutional violations described in this Complaint. For example, a 15-year-old was kept
13 incarcerated while serving a sentence for probation violations that was four times the length
14 allowed by statute, and an 11-year-old child has spent two months in the Grays Harbor Juvenile
15 Detention Center without a capacity hearing, also in violation of state law. In both cases, the
16 public defense system failed to recognize the clear violation of Washington’s juvenile laws until
17 Defendant OPD brought the legal violation to its attention.

18 9. Defendants are also aware that in the Grays Harbor County’s juvenile public
19 defense system, among other constitutional violations, children: (1) are routinely held in
20 detention on bail amounts that are not challenged; (2) receive inadequate and non-confidential
21 communication with their public defender; (3) receive inadequate advisement of rights, options,
22 and consequences from the public defender; (4) fail to receive adequate investigation of the facts,
23 release options, and sentencing options; (5) fail to have their rights protected through motions
24 and trials and the use of expert witnesses; (6) fail to have their rights protected when interrogated
25 by the court; and (7) plead guilty with inadequate consideration of legal defenses.

1 10. It is well-settled law that the State of Washington is ultimately responsible for
2 ensuring the provision of constitutionally adequate public defense services throughout the state.
3 *Gideon*, 372 U.S. at 342-43.

4 11. Courts across the country have recognized that states cannot avoid their
5 constitutional responsibilities by delegating such responsibilities to localities. *See, e.g., Duncan*
6 *v. Michigan*, 284 Mich. App. 724, 774 N.W.2d 89, 97-98, 104—105 (2009); *Phillips v. State of*
7 *Cal.*, Fresno County Superior Court, Case No. 15CECG02201, 4/11/16; *New York Cty. Lawyers'*
8 *Ass 'n v. State of New York*, 192 Misc. 2d 724, 745 N.Y.S.2d 376, 381 (Sup. Ct. 2002), *appeal*
9 *dismissed*, 305 A.D.2d 1123, 759 N.Y.S.2d 653 (2003); *Flournoy v. State of Georgia*, Fulton
10 County, GA Superior Court, consent decree, Case No. 2009CV178947.

11 12. Defendants have known for years that juveniles accused of offenses in Grays
12 Harbor County are systematically deprived of their constitutional right to counsel and suffer
13 great harm as a result.

14 13. Defendant OPD is a highly competent and well-run agency dedicated to
15 improving public defense in Washington. When it has been able to do so, such as in three public
16 defense pilot projects in other counties—including one in a rural juvenile court—it has achieved
17 demonstrably improved results in public defense services. But participation in these projects was
18 on a voluntary basis and OPD has taken the position that it lacks the authority to require
19 constitutional compliance through meaningful supervision and oversight of county public
20 defense systems. The result is services in counties that fall below the constitutional minimum.

21 14. As a result, Defendant OPD does not have sufficient information about attorney
22 caseloads to determine whether public defenders are above the caseload requirements, even
23 when it knows public defenders hold contracts across multiple jurisdictions, a longstanding
24 practice in Grays Harbor County. Neither does OPD require the submission of private caseload
25 numbers.

26 15. Defendants are well aware of the long-standing national and state standards that
27 provide guidance as to the hallmarks of a constitutionally adequate system, and the ways these

standards are being violated by the juvenile public defense system in Grays Harbor County. These hallmarks include independence of the public defense function; provision of sufficient time and a confidential space within which defense counsel can meet with clients; workload controls for defense counsel; assurance that defense counsel's ability, training, and experience match the complexity of their cases; provision of required continuing legal education; and systematic review and supervision of defense counsel according to nationally and locally adopted standards. *See, e.g.*, ABA Ten Principles of a Public Defense Delivery System.

16. Despite this knowledge and their efforts to bring violations of the law to the attention of this system, Defendants have not taken enforcement action to ensure that these deficiencies are remedied and that the public defense services provided to these children is constitutionally adequate.

17. Plaintiff K.B. and the Class members suffer and will continue to be at serious imminent risk of suffering irreparable harm as a result of a widespread systemic failure wholly unrelated to the identity of any particular juvenile defendant. They plead guilty even when meritorious defenses or legal motions are available, with inadequate investigation, and with inadequate understanding of the consequences of conviction and options available to ameliorate those consequences. They spend unlawful periods of time incarcerated and receive harsher sentences than the facts of their cases warrant. And taxpayer funds are being spent on an unconstitutional public defense system.

18. Plaintiffs will continue to suffer these injuries as long as Defendants fail to exercise appropriate supervisory and enforcement authority over the provision of public defense services in parts of the State where the public defense system does not comply with constitutional requirements, such as the Grays Harbor County juvenile public defense system.

19. Plaintiffs have no adequate remedy at law and seek a declaration that (1) the services they currently receive are constitutionally inadequate and (2) Defendants have the authority to take the measures necessary to ensure the provision of constitutionally adequate services.

1 **JURISDICTION AND VENUE**

2 20. The Court has jurisdiction over this action for declaratory relief pursuant to
3 Article IV, Section 6 of the Washington State Constitution, RCW 2.08.010, and RCW 7.24.

4 21. Venue is proper in this Court pursuant to RCW 4.92.010(5) because Defendants
5 are the State and a state agency.

6 **PARTIES**

7 **Plaintiffs**

8 Plaintiff Colleen Davison, legal guardian for K.B., a minor

9 22. Plaintiffs Davison and K.B. are and at all times pertinent herein have been
10 residents of Grays Harbor County, Washington. K.B. is an 11 year old indigent juvenile girl who
11 has been charged with an offense under RCW 13.40 in Grays Harbor County Juvenile Court and
12 her case is in pretrial status. Plaintiff K.B. was assigned a public defender by the Grays Harbor
13 County Juvenile Court.

14 23. On February 1, 2017, K.B. was taken into custody for two counts of alleged
15 second-degree assault against her grandmother, Plaintiff Davison, and against a neighbor. The
16 incident allegedly involved display of a kitchen knife and threats but no physical injury to
17 anyone. Davison is the adoptive mother and legal guardian of K.B. K.B. has been diagnosed
18 with mental health conditions for which she has received treatment for years. She has no prior
19 juvenile offender history.

20 24. RCW 9A.04.050 and JuCR 7.6 require a capacity hearing for juveniles under the
21 age of 12 within 14 days of being charged with an offense. The Grays Harbor County public
22 defender appointed to represent K.B. was unaware of these legal requirements and failed to
23 challenge the lack of a capacity hearing within the statutorily mandated time period until after
24 Defendant OPD brought the violation to the public defender's attention.

25 25. Although the initial charges were dismissed, K.B. allegedly spit on a guard while
26 she was illegally detained. Two months after being taken into custody, K.B. has still not been
27

1 released, and has yet to receive a capacity hearing. She is currently being held on a \$5,000 bail
2 that went unchallenged by her public defender.

3 Plaintiff Gary Murrell

4 26. Plaintiff Gary Murrell is a longtime resident of Grays Harbor County and pays
5 taxes to both the County and the State of Washington. Gary Murrell is interested in ensuring that
6 constitutionally adequate public defense is provided to indigent juveniles in Grays Harbor
7 County and that public defense funds are expended consistent with the requirements of the
8 federal and state Constitutions.

9 Defendants

10 27. Defendant State of Washington has a duty to adhere to the U.S. Constitution, and
11 must protect and enforce the constitution of the State of Washington. A declaratory judgment is
12 sought against Defendant State of Washington based on violation of its duty to comply with the
13 federal and state Constitutions.

14 28. Defendant OPD is a state agency assigned the responsibility “to implement the
15 constitutional and statutory guarantees of counsel and to ensure the effective and efficient
16 delivery of indigent defense services funded by the state.” RCW 2.70.005. Defendant OPD
17 maintains its principal office in Thurston County, at 711 Capitol Way South, Suite 106, Olympia,
18 WA 98501.

19 **CLASS ACTION ALLEGATIONS**

20 29. Plaintiff Davison, on behalf of the minor K.B., brings this action pursuant to CR
21 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively, the “Class
22 Members”) as members of the following proposed plaintiff class (the “Class”):

23 All indigent persons who have or will have juvenile offender cases
24 pending in pretrial status in Grays Harbor County Juvenile Court,
and who have the constitutional right to appointment of counsel.

25 The Class is so numerous that the individual joinder of all members is impracticable. The class is
26 both fluid and inherently transitory, with new charges being filed and some cases reaching
27

1 disposition every week. Over 100 children each year are charged with one or more juvenile
2 offenses in the Grays Harbor County Juvenile Court, are appointed a public defender, and rely on
3 that public defender for legal representation. Although the number of cases pending in pretrial
4 status varies week to week, it is estimated that approximately 20 cases are in pretrial status at any
5 given time.

6 30. In addition to the fact that the Class would consist of many members, the
7 practicalities of locating and communicating with each Class member and their parent or legal
8 guardian are virtually insurmountable, making joinder of all members of the class impracticable
9 if not impossible. Moreover, the vulnerability of the population at issue and the need for
10 protection for such a large number of juveniles warrants class treatment so that the relief sought
11 can be granted to all Class members at once.

12 31. The rights that Plaintiffs assert in this action are universally applicable to all
13 members of the proposed Class, and the constitutional, statutory, and contractual obligations
14 governing the provision of actual representation to juveniles are common to all Class members.

15 32. The questions of law and fact raised by the named Plaintiffs' claims are common
16 to, and typical of, those raised by the Class they seek to represent. Each Plaintiff relies on the
17 State for legal representation during the course of his or her juvenile offender proceedings, and is
18 harmed by the Defendants' failure to provide oversight to Washington's indigent criminal
19 defense system.

20 33. Questions of fact common to the Class include:

- 21 a. Whether Defendants have failed to ensure that juvenile public defense
22 services that put the prosecution's case to the crucible of meaningful
23 adversarial testing are provided in Grays Harbor County;
- 24 b. Whether Defendant's actions and omissions have resulted in a constitutionally
25 deficient system for indigent juvenile public defense in Grays Harbor County;
26 and
27

1 c. Whether, as a result of Defendants' actions and omissions, Class Members are
2 subjected to the risk of harm by the public defense system's failure to provide
3 them with constitutionally adequate legal representation.

4 34. Questions of law common to the Class include:

5 a. Whether Defendants have an obligation under the federal and state
6 constitutions to ensure that indigent children before the juvenile court in
7 Grays Harbor County receive constitutionally adequate representation at all
8 critical stages of the proceedings;

9 b. Whether Defendants are violating their obligation under the Sixth and
10 Fourteenth Amendments to the United States Constitution to ensure that
11 indigent juveniles accused of juvenile offenses in state court proceedings in
12 Grays Harbor County receive constitutionally adequate representation; and

13 c. Whether Defendants are violating their obligation under the Washington State
14 Constitution to ensure that indigent juveniles accused of juvenile offenses in
15 state court proceedings in Grays Harbor County receive constitutionally
16 adequate legal representation.

17 35. The violations of law and resulting harms alleged by the named Plaintiffs are
18 typical of the legal violations and harms suffered by all Class members.

19 36. Plaintiffs' claims are typical of the claims of the proposed Class members because
20 they all arise from a common course of conduct—namely, Defendants' failure to exercise their
21 authority to remedy a public defense system that routinely deprives juveniles of the right to
22 assistance of counsel in violation of the United States Constitution and the Washington
23 Constitution.

24 37. Moreover, all of the claims are based on the same legal theories, and the named
25 Plaintiffs and Class members all seek the same declaratory relief.

26 38. Plaintiff Class representative will fairly and adequately protect the interests of the
27 Plaintiffs.

39. The interests of all class members are the same with regard to the unconstitutionality of the Grays Harbor County juvenile public defense system and Defendants' inaction to remedy it.

40. Plaintiffs' counsel know of no conflicts of interest between the Class representatives and absent Class members with respect to the matters at issue in this litigation; the Class representative will vigorously prosecute the suit on behalf of the Class; and the Class representative is represented by experienced counsel.

41. Plaintiffs are represented by cooperating attorneys for and attorneys employed by the ACLU of Washington State, a nonprofit legal organization whose attorneys have substantial experience and expertise in civil litigation, class actions, and indigent criminal defense matters. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the Class.

42. The maintenance of the action as a class action will be superior to other available methods of adjudication and will promote the convenient administration of justice. Moreover, the prosecution of separate actions by individual members of the Class could result in inconsistent or varying adjudications with respect to individual members of the Class and/or one or more of the Defendants.

43. Class-wide declaratory relief is appropriate because as to all Class members, Defendants have failed to exercise their authority to ensure that the Grays Harbor County juvenile public defense system is appropriately supervised and systematically reviewed for compliance with national and local standards.

44. Defendants have acted or failed to act on grounds generally applicable to all Plaintiffs, necessitating declaratory relief for the Class. Even where—as here—Defendants know that a county is taking no steps to appropriately supervise and review its juvenile public defender system, it has neither engaged in such supervision and review itself nor required that the counties do so themselves.

1 45. The claims asserted here are capable of repetition, yet evading review. There is a
2 continuing and substantial public interest in these matters.

3 **TAXPAYER ALLEGATIONS**

4 46. On March 23, 2017, the Taxpayer Plaintiff Gary Murrell made a demand on the
5 Washington State Attorney General to institute this action, and gave notice that the suit would be
6 filed if response was not received by March 30, 2107. On March 30, 2017, the Washington State
7 Attorney General declined to institute this action on the grounds that it represents Defendants.

8 **FACTUAL ALLEGATIONS**

9 **A. Well-Established State and National Standards Describe the Essential**
10 **Functions of a Constitutionally-Adequate Public Defense System**

11 47. There is a national consensus on the functions any system providing
12 constitutionally adequate legal representation must perform, as well as a consensus regarding the
13 requirements of a constitutionally adequate public defense system for juveniles.

14 48. In 2002, the American Bar Association published the ABA Ten Principles of a
15 Public Defense Delivery System. Among other things, these principles make clear that: (a) the
16 public defense function must be independent; (b) defense counsel must be provided sufficient
17 time and a confidential space to meet with the client; (c) defense counsel's workload must be
18 controlled to permit the rendering of quality representation; (d) defense counsel's ability,
19 training, and experience must match the complexity of the case; (e) there must be parity between
20 defense counsel and the prosecution and defense counsel must be included as an equal partner in
21 the justice system; (f) defense counsel must be provided with and required to attend continuing
22 legal education and (g) defense counsel must be supervised and systematically reviewed for
23 quality and efficiency according to nationally and locally adopted standards. 2002 Ten
24 Principles of a Public Defense Delivery System promulgated by the House of Delegates of the
25 ABA.
26
27

1 49. There is also a strong national consensus that juveniles are especially vulnerable
2 to violation of their rights and compliance with standards beyond those applicable to adult public
3 defense is necessary to have a constitutionally adequate juvenile public defense system.

4 50. In 2009, the National Juvenile Defender Center (NJDC) published the Role of
5 Juvenile Defense Counsel in Delinquency Court, stressing a juvenile defense attorney's
6 obligations to: (a) provide competent, prompt, and diligent representation; (b) investigate cases
7 to find witnesses, examine forensic evidence, locate and inspect tangible objects and other
8 evidence that might tend to exculpate the client, lead to the exclusion of inculpatory evidence, or
9 buttress the client's potential defenses; (c) obtain discovery, file motions, and make arguments to
10 protect the client's rights; (d) prepare for and engage in dispositional advocacy; (e) research and
11 understand the client's legal rights and options; (f) pursue diversion and other means of case
12 dismissal; (g) negotiate reasonable plea offers and ensure clients make well-considered decisions
13 about whether to plead or go to trial; and (h) and communicate in a safe, confidential
14 environment the case's legal progression in frequent discussions using age-appropriate language,
15 so that the client is a fully informed and proactive participant at all stages of the proceedings.

16 51. Washington has also promulgated clear standards for public defense, including
17 standards specifically applicable to juvenile public defense systems. In 2012, the Washington
18 Supreme Court promulgated its Standards for Indigent Defense ("Standards"), which largely
19 codified the Washington State Bar Association ("WSBA") standards of the same name. CrR 3.1
20 Standards; JuCR 9.2 Standards. The Standards applicable to juvenile offender cases, JuCR 9.2
21 Standards, state that caseloads must "allow each lawyer to give each client the time and effort
22 necessary to ensure effective representation."

23 52. The Standards set caseload limits, adjusted if a public defender is not providing
24 public defense services in one jurisdiction full-time, has a private practice, or has a mix of
25 juvenile offender cases and other types of cases. They require careful evaluation of the evidence
26 and the law, as well as thorough communication with clients, before a guilty plea can be entered.

1 53. The Standards require use of investigative services as appropriate, familiarity
2 “with the statutes, court rules, constitutional provisions, and case law relevant to their practice
3 area,” and familiarity “with mental health issues and be able to identify the need to obtain expert
4 services.”

5 54. The 2011 WSBA Standards for Indigent Defense, available at
6 [http://wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on](http://wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx)
7 [%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20\(2011\).ashx](http://wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20(2011).ashx)
8 , additionally require maintaining “a case-reporting and management information system which
9 includes number and type of cases, attorney hours and disposition,” and “systematic monitoring
10 and evaluation of attorney performance based upon publicized criteria. Supervision and
11 evaluation efforts should include review of time and caseload records, review and inspection of
12 transcripts, in-court observations, and periodic conferences.”

13 **B. Defendants Know That the Grays Harbor County Juvenile Public Defense**
14 **System Fails to Comply with Standards Essential to the Provision of**
15 **Constitutionally-Adequate Public Defense Services But Fail to Exercise**
16 **Appropriate Supervision and Oversight**

17 55. Defendants have known for years that the provision of juvenile public defense
18 services in Grays Harbor County is constitutionally deficient and fails to meet well-established
19 national and state standards for constitutionally adequate public defense systems.

20 **a. Independence of the Public Defense Function**

21 56. Defendant OPD knows the importance of independence of the public defense
22 function, and that the public defense function should in particular not operate under the oversight
23 of the judiciary in order to ensure independence from undue political pressures.

24 57. Defendant OPD knows that this standard has long been violated in the Grays
25 Harbor County juvenile public defense system. It knows, for example, that the juvenile court
26 judge in Grays Harbor County is intimately involved with the selection process for juvenile
27 public defenders, and that the judge and prosecutor regularly meet to decide outcomes of
juvenile court cases and then inform the public defender of what will happen to her clients.

1 58. Defendants are also aware that both in juvenile offender and in juvenile status
2 offender cases, where the same public defender and judges handled the cases, there was great
3 pressure on the public defender to not raise certain issues, not advocate for the clients, and to
4 limit the hearing on each case to a few minutes. For example, public defenders rarely if ever
5 object to the onerous and overbroad conditions of probation imposed by the court, or to the
6 prolonged court jurisdiction for probation supervision routinely imposed, despite their knowing
7 this virtually guarantees that the juvenile will be alleged in violation and will face repeated and
8 extended time in detention for the alleged violations. Additionally, juveniles are held on
9 excessive amounts of bail instead of being released back to their families in the community when
10 they present no flight risk, and bail is routinely set at \$5000, without any meaningful assessment
11 of danger to the community or ability to pay. Because the public defender never challenges the
12 standardized bail determination, juveniles spend prolonged and unnecessary amounts of time
13 incarcerated.

14 59. Defendant OPD knows, from public defense contract documents submitted to it
15 by Grays Harbor County in applying for OPD grants, that the County repeatedly renewed the
16 contract for the former public defense provider despite serious concerns with the independence
17 of the public defense function.

18 60. Defendant OPD knows that the County issues the juvenile public defense
19 contracts “based upon the lowest and best bid.” In deciding who to award the contract to,
20 County Commissioners have repeatedly accepted, with virtually no discussion, the
21 recommendations of the Judge overseeing the Court where the attorney will be obligated to
22 challenge the Court’s actions in the course of defending the clients. In December 2016, the
23 County awarded the new contract for lead juvenile public defense to the person who previously
24 held the conflict contract and was most likely to carry on the lack of independence of the public
25 defense function, rather than to bidders with the same or better qualifications.

26 61. Defendants also know that the only form of public defender supervision,
27 monitoring, or oversight in Grays Harbor County is “Presiding Judge monitoring,” and the judge

1 provides no performance reviews. The county has informed Defendant OPD that the Presiding
2 Judge is in charge of receiving any complaints about public defense as well.

3 62. As a result of the lack of independence, Defendants know that juveniles in Grays
4 Harbor suffer harm. For example, in Grays Harbor County Juvenile Court Case No. 15-8-27-4,
5 when the violation of the 30-day limit on detention was brought to the public defender's
6 attention, the public defender refused to file a motion challenging the sentence and stated that he
7 feared losing the public defense contract if he took action.

8 63. Defendant OPD knows that in Plaintiff K.B.'s case, while she was being illegally
9 detained because a capacity hearing had not been scheduled, the prosecutor, public defender, and
10 juvenile court were actively supporting a guilty plea to felony assault by the 11-year-old child
11 who had not been found to have capacity.

12 64. Despite this knowledge, Defendants have failed to exercise appropriate
13 supervision and monitoring to ensure that the public defense function in Grays Harbor County
14 function independently of the judiciary and prosecution.

15 **b. Confidentiality and Client Communications**

16 65. Defendant OPD knows that the juvenile public defender in Grays Harbor County
17 spends little to no time communicating in a confidential setting with clients, advising them of
18 their rights and options in an age appropriate manner, and preparing them to answer the court's
19 questions or testify at hearings.

20 66. The public defender either does not meet with indigent juvenile clients and other
21 witnesses in advance of court hearings, or when the public defender does discuss cases with
22 clients, it is often on the day of the hearing, the afternoon before, or when court is in session for
23 other clients, and may take place in the detention center, in the courtroom, or in the hallway just
24 outside the courtroom where confidentiality is compromised.

25 67. Despite this knowledge, Defendants have taken no steps to ensure that the
26 juvenile public defender in Grays Harbor County ensures confidential communications and
27 communicates regularly with her clients.

1 68. As a direct result of Defendants' inactions, juvenile public defense clients in
2 Grays Harbor suffer serious injury. Because client communication, if any, takes place just prior
3 to court hearings and for a short amount of time, juvenile clients—particularly those with mental
4 health or other disabilities—are unable to grasp the legal complexities facing them and are forced
5 to make life-altering decisions without adequately understanding their rights and options. They
6 are often unaware of their right to remain silent, and routinely in court hearings make
7 incriminating statements or statements directly contrary to their interests, reflecting inadequate
8 communication with their public defender.

9 69. As a result of the Defendants' inactions as to inadequate client communication,
10 indigent juvenile defendants are being deprived of adequate consultation and communication
11 with attorneys; indigent juvenile defendants must make decisions about their rights and whether
12 to contest issues without adequate factual or legal investigation by their public defender; indigent
13 juvenile defendants are being deprived of meaningful opportunities to present a defense; indigent
14 juvenile defendants are waiving their rights without proper consultation with or advice from
15 attorneys; at court hearings where the public defender said the juvenile client was ready to enter
16 a guilty plea, the juvenile expressed confusion and lack of understanding about the plea; indigent
17 juvenile defendants are not receiving accurate information regarding detention alternatives, plea
18 alternatives, dispositional alternatives, plea consequences and consequences associated with
19 immigration status; and indigent juveniles are spending excessive amounts of time incarcerated
20 pretrial, for contempt, and for probation violations.

21 **c. Workload**

22 70. Defendant OPD is well aware of the critical importance of limiting juvenile
23 defender workloads so that defenders can provide constitutionally adequate representation, but it
24 has failed to ensure that workloads in the Grays Harbor County juvenile public defense system
25 do not exceed constitutional standards.

1 71. Although JuCR 9.2 requires public defenders to certify that they are in
2 compliance with caseload limits, Defendants require only that those certifications be filed with
3 each individual jurisdiction.

4 72. Defendants collect information as part of Defendant OPD's statutory authority to
5 disburse grants to counties under RCW 10.101.050, including to Grays Harbor County.
6 Defendant OPD awarded Grays Harbor County \$77,934 for 2016. From that grant application,
7 Defendants know that in 2015 the juvenile defender handled 109 offender cases, 46 probation
8 violation cases, and 266 status offense cases.

9 73. However, Defendant OPD does not itself receive public defender caseload
10 certifications, even when public defenders are known to hold multiple contracts across various
11 jurisdictions. As a result, certifications are meaningless when a public defender carries contracts
12 in multiple jurisdictions and/or engages in paid private representation or other legal work. There
13 are no structural barriers to ensure that public defenders in Grays Harbor do not also exceed their
14 caseload limits. The county's court administrator states that the county possesses no caseload
15 records; records submitted to the state Administrative Office of the Courts are the only caseload
16 records that exist, demonstrating that the state does not monitor caseloads.

17 74. The county also has stated that no time records exist to show the amount of time
18 the juvenile public defender spends on cases, further demonstrating the deficiency of
19 Defendants' monitoring/oversight systems.

20 75. Defendants have conducted multiple site visits to Grays Harbor County, including
21 one specifically regarding juvenile court public defense in connection with an application for an
22 Office of Juvenile Justice and Delinquency Program Grant. At one of those visits, Defendants
23 were informed by the presiding juvenile court judge that the court did not plan to oversee
24 compliance with caseload limits and would instead rely only on the filing of certification
25 statements.

26 76. Defendants are aware that Grays Harbor County has long contracted with a single
27 attorney for all juvenile offender and all juvenile status offender cases where there is a right to

1 counsel, except where there is a conflict. Defendants are also aware that these public defenders
2 often have additional private cases, have simultaneously served as judges, and have public
3 defense contracts with other courts.

4 77. Upon information and belief, Defendants know that there is inadequate conflicts
5 screening and case tracking, despite the fact that public defenders routinely hold multiple
6 contracts across many jurisdictions.

7 78. Despite knowing about the lack of documentation necessary to enforce caseload
8 limits, Defendants have taken no action to monitor or enforce caseload limits in the Grays
9 Harbor juvenile court.

10 79. As a result of Defendants' inaction, juveniles entitled to representation suffer
11 harm. They receive representation from public defenders who spend little to no time
12 investigating, litigating, or communicating with them about their cases, much less putting the
13 prosecution's case to the "crucible of adversarial testing."

14 **d. Ability, Training, and Experience Must Match the Complexity of the**
15 **Case**

16 80. Defendants are well aware that Grays Harbor County makes no attempt to match
17 the ability, training, and experience of its public defenders with the complexity of their clients'
18 cases. One public defender receives all cases unless there is a conflict, regardless of the cases'
19 complexity or her ability to handle a particular type of case.

20 81. As a result, children in Grays Harbor are routinely represented by public
21 defenders who do not have the necessary ability, training, or experience. They suffer great harm
22 as a result.

23 82. As an example, on October 15, 2015, in Grays Harbor County Juvenile Court
24 Case No. 15-8-27-4, a juvenile was sentenced to 120 days in detention for probation violations
25 being considered in a single hearing. RCW 13.40.200(3) limits the detention time for violations
26 considered in a single hearing to 30 days. Yet the public defender appointed to represent the
27

1 juvenile failed to take any action showing knowledge of this legal violation or attempting to
2 remedy it, even after Defendant OPD brought it to his attention.

3 83. As another example, on February 1, 2017, Plaintiff K.B., an 11-year-old girl, was
4 taken into custody. Because she is eleven, she is presumed incapable of committing a crime
5 under RCW 9A.04.050, and the court has no authority to act without conducting a capacity
6 hearing within 14 days. JuCR 7.6; *State v. Golden*, 112 Wn.App. 68, 47 P.3d 587 (2002), *review*
7 *denied*, 148 Wn.2d 1005 (2003). The Grays Harbor County public defender appointed to
8 represent K.B. failed to request a capacity hearing until Defendant OPD brought the violation to
9 the public defender's attention.

10 84. Other examples include that juveniles are denied access to alternative sentences
11 even when they qualify. During a revocation of SSODA hearing, in which the judge on the
12 record raised a question of law about whether one of the public defender's clients could be sent
13 to a residential treatment facility in another state as an alternative to being sent to the state
14 juvenile prison system, the public defender made no investigation into the law that would allow
15 the Court to enter such an order nor did he investigate the prior treatment contract the Court
16 entered into. The public defender also made no investigation into alternative placements in
17 Washington, despite the judge's remarks on the record that he would not send the client back to
18 another state.

19 85. Meritorious legal defenses such as self-defense are not raised and juveniles
20 inappropriately plead guilty and/or receive harsher sentences than the facts of their cases warrant.
21 For example, one child was ready to enter a guilty plea to assault even though he had been
22 threatened with a knife. When these facts emerged upon colloquy with the judge, the plea could
23 not be entered and the child ended up being detained another two weeks.

24 86. Despite knowledge of these specific injuries, Defendants have failed to take any
25 actions to ensure that the systemic changes needed to ensure compliance with this standard are
26 made so that future children do not suffer similar harm.

1 **e. Parity Between Prosecution and Defense Counsel Functions**

2 87. Defendants have long known that the defense and prosecutorial functions in the
3 Grays Harbor County juvenile system are not remotely treated as an equal partner in the justice
4 system.

5 88. Indeed, Defendant OPD knows that the juvenile court judge regularly meets with
6 the prosecutor to pre-determine the outcome of juvenile court cases and that the public defender
7 is later informed of what those outcomes will be and expected to acquiesce.

8 89. Upon information and belief, Defendant OPD also knows that the although the
9 prosecutor is a full time county employee, the juvenile public defender is only a part time
10 contract employee of the county—with additional jobs elsewhere to help cover expenses like
11 office overhead.

12 90. Defendants know that the public defender only requests experts and investigators
13 one or two times a year in Grays Harbor juvenile cases and that social workers are seldom
14 utilized. In contrast, the Prosecutor has experts readily available and frequently uses them,
15 because she can call the probation officers, detention officers, school officials, treatment
16 providers, and others as witnesses. Because the public defender regularly fails to present
17 witnesses aside from the Defendant and family members, the Prosecutor's witnesses are treated
18 like experts.

19 91. As a result of these systemic deficiencies, children in the Grays Harbor juvenile
20 justice system suffer serious harm. Their cases receive inadequate time and attention from their
21 public defenders and they are expected to plead guilty or otherwise go along with the results
22 predetermined by the juvenile court judge and prosecutor.

23 92. Despite knowledge of these specific injuries, Defendants have failed to take any
24 actions to ensure parity for juvenile public defenders in the Grays Harbor system or to ensure
25 that the public defenders there are treated as equal partners.

1 **f. Continuing Legal Education**

2 93. Defendants are well aware of the importance of continuing legal education for
3 public defenders and, indeed, provide a number of high quality trainings every year. However,
4 even where—as here—Defendants know a particular public defender is in dire need of specific
5 continuing legal education, Defendants do not ensure that those public defenders actually attend
6 the necessary trainings and have no supervisory plan in place to ensure that future juvenile
7 defenders in Grays Harbor County attend similar such trainings.

8 94. Defendants have not taken enforcement action to ensure that juvenile public
9 defenders in Grays Harbor County are actually equipped with the training and expertise needed
10 to represent these vulnerable clients. Defendants do not, for example, review juvenile defender
11 qualifications, experience levels, or continuing legal education certifications. Neither do they
12 require that Grays Harbor County do so. As noted above, national and local standards make clear
13 that children in particular have challenging legal needs, demonstrating the importance of
14 adequate training specific to developments in the law and science regarding juveniles. Failure to
15 comply with these standards contributes to the constitutional violations occurring in the Grays
16 Harbor County juvenile public defense system.

17 95. As a result of Defendants’ failure to ensure compliance with this standard,
18 juvenile public defenders in Grays Harbor County can simply choose not to attend essential
19 trainings and consequently lack the substantive knowledge and ability required to provide
20 constitutionally adequate representation. Available defenses go unraised, inappropriate guilty
21 pleas are entered, and children are denied beneficial services to which they would otherwise be
22 entitled.

23 96. Their clients suffer grave harm as a result. In dozens of cases spanning several
24 years, children charged with offenses in Grays Harbor County Juvenile Court are ordered
25 detained while awaiting trial, with bail routinely set at \$5,000, in violation of applicable
26 constitutional, statutory, and court rule requirements, with no challenge to the bail amounts filed
27 by the public defender.

1 97. In one case, the Grays Harbor County juvenile court public defender was
2 observed informing the court that the juvenile client wanted to plead guilty as charged to an
3 assault, but when the juvenile was asked what they did, it was clear that there was a self-defense
4 issue. The public defender failed to raise the defense and the juvenile eventually entered a guilty
5 plea.

6 98. At a revocation of Special Sex Offender Disposition Alternative hearing, the court
7 raised a question of law about whether a juvenile defendant could be sent to a residential
8 treatment facility in another state as an alternative to being sent to the state juvenile prison
9 system. The public defender made no investigation into the law that would allow the court to
10 enter such an order, resulting in denial to the juvenile of potentially beneficial and rehabilitative
11 services.

12 **g. Supervision and Review**

13 99. Defendants are well aware that there is no meaningful supervision or review of
14 juvenile public defense counsel in Grays Harbor County.

15 100. Defendants know that as a result of the failure to provide meaningful supervision
16 or oversight, the contracts of public defenders are routinely renewed even in the face of stark
17 evidence of their failure to provide even the most minimally adequate defense services. For
18 example, the County renewed the contract of former public defender Imler from at least 2008 to
19 2016 without any intervention by Defendants despite grave concerns held by OPD staff about
20 Imler's ability and/or willingness to provide adequate representation to his juvenile clients.

21 101. Despite this knowledge, Defendants have failed to ensure that defense counsel in
22 the Grays Harbor juvenile system are appropriately supervised and systematically reviewed to
23 ensure compliance with national and local standards, have failed to require Grays Harbor to
24 engage in such supervision and review, and have not engaged in any direct supervision or review
25 themselves.

26 102. As a direct result, juvenile defendants in Grays Harbor suffer serious harm. They
27 are routinely pressured by their public defenders to plead guilty, and they receive representation

1 from defenders who have not conducted even the most basic investigation into the facts of their
2 cases and who do not perform even the most basic aspects of motion practice or litigation.

3 103. Defendant OPD has long known that the Grays Harbor County juvenile public
4 defense system routinely subjects juveniles to a “meet and plead” system. The documents
5 Defendant OPD receives in connection with grant applications, as well as court files and
6 proceedings in court, demonstrate that the regular practice in Grays Harbor County juvenile court
7 is for children to plead guilty, often to the same offense charged, within a few weeks of
8 arraignment.

9 104. Given the short amount of time between charge and plea, there is no opportunity
10 for the public defender to investigate exonerating or mitigating facts of the case, or facts about
11 the child’s background, which are relevant to legal defenses and the appropriate disposition of
12 the case. Nor are there any documents such as time records, motions, requests for investigative or
13 expert services, or dispositional memoranda showing compliance with the standards.

14 105. Motions and trials are infrequent and the public defender rarely makes objections
15 or presents evidence or testimony on behalf of the defense. Juveniles are routinely subjected to
16 lengthy pretrial and post-sentencing incarceration. Defenders routinely agree to deferred
17 dispositions or regular sentences that require lengthy court supervision and compliance with a
18 long list of onerous conditions that are near-impossible for most juveniles to meet, resulting in
19 years of a repeated cycle of further incarceration, disrupting their education, family life, and
20 future.

21 **C. Defendants are Well-Equipped and Capable of Enforcing Compliance with**
22 **the Standards**

23 106. The state agency officially charged with the duty to “implement the constitutional
24 and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent
25 defense services funded by the state of Washington” is Defendant OPD. RCW 2.70.005.
26
27

1 107. OPD was established “[i]n order to implement the constitutional and statutory
2 guarantees of counsel and to ensure effective and efficient delivery of indigent defense services
3 funded by the state of Washington.” RCW 2.70.005.

4 108. Defendant OPD is required to “[a]dminister all state-funded services in . . . trial
5 court criminal indigent defense, as provided in chapter 10.101 RCW.” This includes the
6 provision of public defense services to accused juvenile offenders. *See, e.g.*, RCW 13.50.010.

7 109. In carrying out its duty to implement the constitutional right to counsel,
8 Defendant OPD operates state-wide programs and provides funding to cities and counties to
9 improve the delivery of public defense services. The funding and oversight provided by
10 Defendant OPD extends to juvenile defendants and proceedings in juvenile courts. RCW
11 10.101.050 (OPD “shall disburse appropriated funds to counties and cities . . . [to] improve the
12 quality of services for both juveniles and adults.”). Additionally, all juvenile courts are required
13 to provide Defendant OPD with records needed to implement the agency’s oversight, technical
14 assistance, and other functions. RCW 2.70.020, 13.50.010(13).

15 110. Defendant OPD is authorized to designate funds to eligible counties that meet
16 minimal standards, and counties receiving funds must document to Defendant OPD that they are
17 “meeting the standards for provision of indigent defense services as endorsed by the Washington
18 state bar association or that the funds . . . have been used to make appreciable demonstrable
19 improvements in the delivery of public defense services.” RCW 10.101.050; RCW 10.101.060.

20 111. Defendant OPD is the entity responsible for determining eligibility of counties to
21 receive state funds for public defense, and “[i]f a determination is made that a county or city
22 receiving state funds . . . did not substantially comply with this section, the office of public
23 defense shall notify the county or city of the failure to comply and unless the county or city
24 contacts the office of public defense and substantially corrects the deficiencies within [a
25 specified period of time], the county’s . . . eligibility to continue receiving funds under this
26 chapter is terminated.”

1 112. Public defenders must attend yearly trainings in order for the county to receive
2 Defendant OPD funding, and the county must report expenditures for all public defense services,
3 attorney caseloads, and copies of each current public defense services. Individuals that contract
4 to perform public defense services must report to the county hours billed for nonpublic defense
5 legal services as well.

6 113. Defendant OPD has been active for years in working to adopt public defense
7 standards in Washington and support local governments in complying with those standards. It is
8 also currently involved in the WSBA Council on Public Defense (“CPD”)’s effort to adopt
9 updated juvenile public defender standards.

10 114. Defendant OPD regularly administers pilot programs, offers CLEs and technical
11 assistance to public defenders, and has staff with the expertise necessary to enforce the standards.
12 Defendant OPD is also well aware of the need for additional training and supervision of juvenile
13 public defense services in particular. For example, it recently applied for a grant from the U.S.
14 Department of Justice that would have funded the creation of voluntary pooled defense services
15 in certain counties—for which Defendant OPD would have directly administered the contracts. It
16 has received a grant from the federal OJJDP to “eliminate justice by geography” as to the
17 juvenile public defense system in Washington, and has a strategic plan for doing so.
18 http://www.opd.wa.gov/documents/0409-2016_JuvenileDefenseStrategicPlan.pdf. For example,
19 it is operating a Juvenile Defense Training Academy starting April 29, 2017.
20 http://www.opd.wa.gov/documents/00425-2017_JuvenileTrainingAcademy.pdf

21 115. Defendant OPD has general knowledge of which jurisdictions in the state—
22 including Grays Harbor County—routinely provide constitutionally inadequate services, and it
23 has the expertise to fix the problems in those jurisdictions. For example, Defendant OPD has run
24 pilot projects that were effective in bringing constitutional and high quality public defense to
25 various jurisdictions. In 2006, it ran a pilot project for the Grant County juvenile public defense
26 system, by providing additional attorneys and other support, and requiring compliance with the
27 Ten Core Principles for Providing Quality Delinquency Representation through Public Defense

1 Delivery Systems by NJDC and NLADA. Defendant OPD's pilot project resulted in improved
2 communication with clients, improved motions, increased diversions, fewer cases and less
3 serious charges filed by the prosecutor, and a lower conviction rate, among other improvements.

4 116. But, to date, OPD has not exercised authority to compel jurisdictions to change
5 their ways—even where, as here, it has long been aware that the services being provided are
6 constitutionally deficient.

7 117. Although many counties in Washington State provide constitutionally adequate—
8 or superior—public defense services, Defendants have failed to ensure that all counties meet at
9 least the constitutional floor. Each of Washington's 39 counties operates its own public defense
10 system. Defendants current system enables counties (like Grays Harbor) to provide woefully
11 deficient services to one of the most vulnerable populations in the state while other counties
12 provide stellar services.

13 118. Although there has been litigation challenging unconstitutional systems at the
14 local level in Washington, and there has been progress in adoption of statewide public defense
15 standards with help from Defendant OPD, the current regime permits systems with the worst
16 constitutional violations—like Grays Harbor County—to violate the right to counsel with
17 impunity.

18 COUNT I

19 **VIOLATION OF THE RIGHT TO COUNSEL UNDER THE SIXTH AND** 20 **FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION**

21 119. The Sixth and Fourteenth Amendments to the U.S. Constitution require the State
22 to provide adequate legal representation to Plaintiffs in juvenile offender proceedings. Based on
23 the allegations above, Defendants know that the Grays Harbor County public defense system for
24 juveniles accused of offenses fails to comply with the Constitution and they have failed to
25 exercise their authority to remedy those violations.

26 120. Therefore, Defendants have violated and caused violations of the Class Plaintiffs'
27 rights to the assistance of counsel pursuant to the Sixth and Fourteenth Amendments.

1 121. These constitutional violations provide Plaintiffs with the right to obtain
2 declaratory relief pursuant to the Declaratory Judgment Act (Chapter 7.24 RCW).

3 **COUNT II**

4 **VIOLATION OF THE RIGHT TO COUNSEL UNDER THE STATE CONSTITUTION**

5 122. Wash. Const. Art. 1, sections 3 and 22 and RCW 13.40.140 recognize juveniles'
6 right to counsel in juvenile offender proceedings. Defendants know that the Grays Harbor
7 County juvenile public defense system has been violating these rights for years and they have
8 failed to exercise their authority to remedy those violations.

9 123. Therefore, Defendants have violated and caused violations of the Class Plaintiffs'
10 rights to the assistance of counsel pursuant to the state Constitution.

11 124. These constitutional violations provide Plaintiffs with the right to obtain
12 declaratory relief pursuant to the Declaratory Judgment Act (Chapter 7.24 RCW).

13 **COUNT III**

14 **VIOLATION OF STATE STATUTES AUTHORIZING DEFENDANTS TO TAKE**
15 **ACTION TO REMEDY COUNTY INDIGENT DEFENSE SYSTEMS**

16 125. Defendants know that the Grays Harbor County public defense system for
17 juveniles accused of offenses violates the state and federal constitutions and applicable court
18 rules and professional standards, yet they have not acted to remedy these violations despite
19 possessing authority to do so under RCW 2.70, 10.101, and other statutes.

20 126. These constitutional violations provide Plaintiffs with the right to obtain
21 declaratory relief pursuant to the Declaratory Judgment Act (Chapter 7.24 RCW).

22 **RELIEF REQUESTED**

23 WHEREFORE, Plaintiffs respectfully request that this Court:

- 24 A. Assert jurisdiction over this action;
- 25 B. Order that Plaintiffs may maintain this action as a class action pursuant to CR 23;
- 26 C. Declare unconstitutional and unlawful:

- 1 (i) Defendants' violation of Plaintiffs' rights, including their rights to
2 effective assistance of counsel, under the Sixth and Fourteenth
3 Amendments to the United States Constitution;
4 (ii) Defendants' violation of Plaintiffs' rights, including their rights to
5 effective assistance of counsel, under Article I, § 22 and Article I, § 3 of
6 the Washington State Constitution;

- 7 D. Declare that Defendants are responsible for the constitutional violations found;
8 E. Grant such other relief as the Court deems appropriate.
9

10 DATED: April 3, 2017

By: 

Mathew L. Harrington, WSBA No. 33276
Mathew.Harrington@stokeslaw.com
Theresa H. Wang, WSBA No. 39784
Theresa.Wang@stokeslaw.com
STOKES LAWRENCE, P.S.
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Telephone: 206.626.6000
Facsimile: 206.464-1496

Emily Chiang, WSBA No. 50517
echiang@aclu-wa.org
Nancy L. Talner, WSBA No. 11196
talner@aclu-wa.org
Breanne Schuster, WSBA No. 49993
bschuster@aclu-wa.org
ACLU of Washington Foundation
901 Fifth Avenue, Suite 630
Seattle, Washington 98164
Telephone: 206.624.2184

Attorneys for Plaintiffs