☐ EXPEDITE
X Hearing is set:
Date: Friday, November 2, 2018
Time: 9:00 a.m.
Judge: Christopher Lanese
☐ No hearing is set.

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.

Case No.: 17-2-01968-34

PLAINTIFFS' OPENING BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

TABLE OF CONTENTS

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

TABLE OF AUTHORITIES

Cases

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

Statutes

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

Other Authorities

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

I. INTRODUCTION

The landmark decision of *Gideon v. Wainwright* held that the duty to uphold the constitutional right to counsel belongs to the states. The right to counsel "which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment." 372 U.S. 335, 342, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). The courts have reinforced that point repeatedly. *See* Section IV.B., below. A state holds in particular the constitutional duty to provide counsel for children confronted by the justice system and its attendant power and peril:

> The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child 'requires the guiding hand of counsel at every step in the proceedings against him.'

In re Gault, 387 U.S. 1, 36-37, 87 S. Ct. 1428, 19 L. Ed. 2d 527 (1967) (citations omitted).

This Motion demonstrates that the State of Washington has both the constitutional and statutory duty, as well as the legal authority, to remedy Grays Harbor County's ("the County") deficient juvenile public defense system. Defendant Office of Public Defense ("OPD"), through its agents, admits the essential tasks required by the right to counsel. Plaintiffs' expert has concluded that those essential tasks are not occurring and that, indeed, the County's juvenile public defense system "does not act as counsel" for children being prosecuted, failing to provide even minimally effective representation at every critical stage. In short,

> [t]he attorney represents the client in name only…having no idea what the client's goals are, whether there are any defenses or mitigating circumstances that require investigation, or whether special considerations regarding immigration status, mental or physical conditions, or criminal history exist. Such perfunctory 'representation' does not satisfy the Sixth Amendment.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1131-32 (W.D. Wash. 2013); *United States v. Cronic*, 466 U.S. 648, 656, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) ("The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing").

The evidence clearly establishes the systemic deficiencies which perpetuate the violation of the right to counsel occurring here. Plaintiffs' expert and OPD's witnesses also agree about

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

the severe harm to children when the right to counsel is violated. This Court should grant the declaratory relief sought by Plaintiff. The State holds the duty. The State must act.

II. STATEMENT OF FACTS

A. The County juvenile public defense system has long been and continues to be unconstitutional, harming children

Children in the County are being harmed by the unconstitutional juvenile public defense system, as shown by both Defendants' admissions and the evidence received in discovery and surveyed by Plaintiffs' expert. Here are some examples:[1]

M.D. - In April 2016, OPD learned that a 16-year-old boy, M.D.,[2] was serving 120 days for probation violations in the County's juvenile detention center. The sentence was illegal, four times the length allowed by RCW 13.40.200.[3] The County contracts with a single attorney to represent all juvenile offenders and status offenders when there is a right to counsel, unless there is a conflict.[4] M.D., like virtually all other children who come before the juvenile court, was indigent and the public defender who held the lead juvenile offender contract was appointed.[5] The public defender (Kyle Imler) did not object to the sentence or attempt to seek M.D.'s release from the illegal sentence, even after OPD told the public defender the sentence was illegal.[6] Eventually the *prosecutor* filed a motion conceding the sentence violated Washington law and requesting M.D.'s release.[7] Later that year when the County filed its application for RCW 10.101 state funding for 2017, OPD did not raise any concerns or take action to address the problem.

K.B. - Shortly after March 5, 2017, OPD received a 21-page letter from named Plaintiff Colleen Davison detailing how her 11-year-old granddaughter K.B., who had no prior criminal history, had been incarcerated since January 31 in the County juvenile detention center and was

---

[1] The facts presented here and elsewhere are based on redacted exhibits and files from the current public defender. Plaintiffs have separately informed Defendants of exactly which files are referred to in these sections.
[2] Ex. 2 (Yeannakis Dep.) at 160:8-166:1; Ex. 1 (OPD 30(b)(6) Dep.) at 67:13-69:13. (All references to "Ex." are references to exhibits attached to the Declaration of Mathew Harrington.)
[3] Ex. 6; Ex. 7.
[4] Ex. 8.
[5] Ex. 6; Ex. 7.
[6] *Id.*
[7] Ex. 7.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

being harmed by the public defense system there.[8] Among other deficiencies, the letter described how the public defender was "offering no defense" and failing to adequately communicate with her extremely young client, despite Davison having given the public defender documents showing the child's past trauma from parental abuse.[9] The letter also described K.B.'s ongoing school, medication, and mental health problems.[10] The County juvenile public defender appointed at K.B.'s first appearance on February 1 was Amanda Kleespie, the county's former juvenile public defender for conflict cases.[11] In her March 2017 letter, Davison described to OPD how the public defender was facilitating attempts to coerce K.B. into pleading guilty instead of investigating and building a case for release and/or a defense.[12]

Because K.B. was 11 years old, the law presumes she was incapable of committing a crime and RCW 9A.04.050 mandated a capacity hearing within 14 days of first appearance. There is no evidence the public defender was aware of that requirement until over a month later, after OPD, in receipt of Davison's letter, brought it to her attention.[13] K.B. was held in custody on $10,000 bail; the record shows no objection to the bail amount by the public defender.[14] OPD was present during one of K.B.'s hearings, observing that the public defender did not stand with her, leaving this 11-year-old girl to face the judge's (i.e., the fact-finder's) questioning alone.[15]

On March 3, after K.B. had been in custody over a month, she allegedly spit at a guard in the detention center.[16] The public defender received "incident reports" from the detention center, which are regularly included in the public defender's case files, reporting several self-harm incidents and rage outbursts, and that the mental health professionals (MHPs) had been called in numerous times because of K.B.'s suicide threats and attempts.[17] Instead of investigating

---

[8] Ex. 9 (Davison letter to OPD).
[9] Ex. 9. The abuse experienced by K.B. led to the State removing the child from her parents and placing her in Davison's custody.
[10] Ex. 9.
[11] Ex. 10; Ex. 11.
[12] Ex. 9.
[13] Ex. 12.
[14] Ex. 13.
[15] Ex. 2 (Yeannakis Dep.) at 150:18–151:8, 153:20–154:21.
[16] Ex. 14.
[17] Ex. 15.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

possible defenses or seeking K.B.'s release from the incarceration that was taking a severe toll on her mental health, on March 6, 2017 the public defender wrote to the prosecutor with a plea offer.[18] The offer was to plead guilty to two felonies on the charges where the capacity hearing had not been timely held, and add another felony for the detention spitting incident.[19] Kleespie's letter indicates she had not yet discussed the offer with her client.[20] It was not until March 8 that Kleespie filed a motion to dismiss the original two assault charges on which a capacity hearing had not been timely held; on March 10, the prosecutor agreed those charges had to be dismissed.[21] However, the prior day a felony assault charge was filed against K.B. for the spitting incident, which was used to continue her incarceration.[22] K.B. was not released until April 20, 79 days after her arrest, and after a crisis center worker reported that the juvenile detention center's treatment amounted to child abuse.[23]

J.C. - In November 2017, Plaintiffs' expert witness Simmie Baer, who frequently does trainings with and for OPD, observed County juvenile court for the first of many times.[24] She observed a case involving 13-year-old J.C.[25] The child was notably small and had no prior criminal history.[26] His diversion was terminated *not* for criminal conduct but for J.C. having experienced a problem in school.[27] During court hearings, J.C.'s public defender Kleespie sat at a table behind J.C. while he stood directly before the court facing judicial questioning without the public defender intervening.[28] At the time of the November 30 pretrial hearing, over three weeks after appointment, Kleespie stated that she had not yet met with J.C.[29] The court granted a request for a one-week continuance and ordered J.C. to be taken into custody and held at the

---

[18] Ex. 16.
[19] *Id.*
[20] *Id.*
[21] Ex. 12; Ex. 17.
[22] Ex. 14.
[23] Ex. 18; Ex. 19.
[24] Expert Report of Simmie Baer (attached to the Declaration of Simmie Baer), hereinafter referred to as "Expert Report."
[25] *Id.* at 8.
[26] *Id.*
[27] Ex. 20.
[28] Expert Report at 8.
[29] Ex. 21.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

detention center.[30] Upon hearing he was to be locked up, J.C. sobbed and said repeatedly that he needed a hug.[31] The public defender finally met with J.C. on December 6, nearly a month following appointment, one day before the continued pretrial hearing, and after J.C. had been incarcerated nearly a week.[32] On December 7, J.C. pled guilty to the charge of unlawful inhalation of toxic fumes, and was sentenced to 21 days in detention, with credit for time served.[33] No motion challenging J.C.'s statements to police was filed, and Kleespie later admitted in deposition she was unfamiliar with the 2011 U.S. Supreme Court case that held a 13-year-old child's age and disabilities are legally relevant to the admissibility of statements to police.[34]

H.B. – 16-year -old H.B. was incarcerated in the County juvenile detention center for issues related to her being a foster child in the legal custody of the State when an incident in the detention center led to her being charged with three counts of felony custodial assault, and public defender Kleespie was appointed to represent her on October 23, 2017.[35] In court, she exhibited signs of severe mental health problems.[36] H.B. was ordered detained on $15,000 bail; there is no evidence of any objection to the bail amount by Kleespie.[37] On November 16, H.B. pled guilty to two felony counts and was sentenced to 37 days of confinement and 12 months of probation.[38] She has subsequently done 30-day periods of detention time for probation violations.[39] On those matters, the public defender usually met with H.B. the day before a court hearing and, on the day of the hearing, H.B. admitted the violation.[40]

C.W. - C.W. was charged with two counts of second degree rape.[41] He was 15 years old

---

[30] Expert Report at 8.
[31] *Id.*
[32] Ex. 21; Ex. 22.
[33] Ex. 23.
[34] *J.D.B. v. North Carolina*, 564 U.S. 261, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011); Ex. 5 (Kleespie Dep.) at 91:11-21.
[35] Ex. 24.
[36] Expert Report at 8.
[37] Ex. 25.
[38] Ex. 26.
[39] Ex. 27.
[40] Ex. 27; Ex. 28.
[41] Expert Report at 6.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

with no criminal history when he was charged, and spent nearly 11 months in detention prior to trial, on $75,000 bail, with no objection to the bail amount by the public defender.[42] Part of the evidence used to convict C.W. at trial were his statements to police when he was arrested; public defender Kleespie filed no motion to suppress.[43]

N.C. – Plaintiffs' expert observed another child, N.C., exhibiting obvious signs of extreme mental distress while in court.[44] Public defender Kleespie was appointed to represent then 14-year-old N.C. on July 7, 2017 on a misdemeanor assault charge involving a family dispute; police reports note N.C. had been physically assaulted by an intoxicated family member the day before, and she had a history of mental health issues.[45] N.C. was held in detention for two weeks with only two visits from the public defender, and was released on July 20.[46] There is no evidence that public defender Kleespie conducted an investigation, filed motions, or retained an expert to pursue defenses, reduce charges or the form of disposition, or to prepare for trial.[47] N.C. pled guilty and entered a deferred disposition which was later revoked when her mom alleged that N.C. assaulted her.[48] Just a few weeks later, N.C. was charged with possession of marijuana after a family member reported N.C. was slamming her head into the wall and saying she wanted to die; the week before, she had been taken to a hospital to be evaluated for self-harming and suicidal thoughts.[49] N.C. made statements in response to questioning by the police[50]; nothing in the record shows the public defender considered or filed a suppression motion.[51] N.C. served 21 days in detention.[52]

The County's admissions regarding public defense system deficiencies

Contributing to the clear deficiencies in the juvenile public defense system, the County

---

[42] *See* Expert Report at 6 (describing these issues).
[43] *See* Expert Report (describing these issues).
[44] *See* Expert Report (describing these issues).
[45] Ex. 29.
[46] Ex. 30.
[47] *See* Expert Report (describing these issues).
[48] Ex. 31; Ex. 32.
[49] Ex. 33.
[50] *Id.*
[51] *See* Expert Report (describing these issues).
[52] Ex. 31; Ex. 34.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

has failed to monitor the public defenders and ensure compliance with court rules and state standards. The current juvenile defender's contract calls for her to keep and provide time records showing time spent on cases and to provide monthly reports to the County.[53] The County also states under oath in its funding applications that attorneys keep time records; however, in its Rule 30(b)(6) deposition the County admitted that it does not obtain time records from any defense attorney contracted to the County, including Kleespie.[54] The County also admitted Kleespie did not file monthly reports for eight months in 2017, nor certifications of compliance for 2016 and 2017 as required by court rules.[55] The County did not realize monthly reports were lacking until it received a public records request.[56] One of the County's documents shows Kleespie did not file a certification required by court rules until 3 ½ years had gone by.[57]

Kleespie admitted that she does not keep time records, and only provides the County with a total monthly figure called "case point," which is based on the County's juvenile court "Case Weighting Policy."[58] The County admitted this policy was developed by the juvenile court judge based solely on his personal experience of how long cases typically take in the County's juvenile court.[59] The policy states that juvenile offense cases should take six hours or less and that juveniles typically admit probation violations early in the proceedings and thus should take a total of 54 minutes or less.[60] OPD Director Joanne Moore testified that the case weighting policy does not comply with established standards, because it is not based on a time study.[61] The County admitted that it does not review or audit Kleespie's "case point" figures in her monthly reports.[62] In addition, even though the County asked the public defender to separate juvenile offense cases from the status offense cases in her reports, she has not done so.[63] The public

---

[53] Ex. 10 at 7.
[54] Ex. 35 at 12; Ex. 4 (GH 30(b)(6) Dep.) at 84:14–85:2
[55] Ex. 36; Ex. 4 (GH 30(b)(6) Dep.) at 70:21–72:15, 75:22–76:4); *see* JuCR 9.2(requiring reporting and certification.
[56] Ex. 36.
[57] Ex. 37.
[58] Ex. 38; Ex. 5 (Kleespie Dep.) at 48:10-49:23.
[59] Ex. 4 (GH 30(b)(6) Dep.) at 64:13–65:11.
[60] Ex. 38.
[61] Ex. 1 (OPD 30(b)(6) Dep.) at 55:7-56:2; 66:17-67:9.
[62] Ex. 4 (GH 30(b)(6) Dep.) at 76:16–82:7.
[63] Ex. 39; Ex. 5 (Kleespie Dep.) at 68:5-69:3.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

defender also testified that she has defense contracts with two small cities in the County, such that her juvenile work is two-thirds of her time, yet the County testified that it does not know whether Kleespie has any contracts other than the lead juvenile contract.[64]

The County further admitted it does not supervise or conduct any type of performance evaluation of juvenile defenders.[65] The County admits that it does not ask for information regarding juvenile offense case outcomes.[66] There can be no dispute of material fact that: the County cannot know whether a lawyer is over caseload limits set by court rule; the County does not know exactly how many juvenile offense cases the lawyer conducts; and, the County has no information of what the lawyer is doing in cases, or any measure of quality of performance.

B. Plaintiffs' expert opines that the County system amounts to no counsel at all and is unconstitutional; agents of OPD corroborate that opinion[67]

Plaintiffs' expert Baer is a nationally known expert on juvenile public defense, and recently retired from being a public defender in Cowlitz County. As her Report explains, Baer is very familiar with the constitutional and other standards applicable to provision of the right to counsel in juvenile court, requirements and standards that are the subject of trainings given by OPD to public defenders. Baer, like OPD, specifically trains public defenders on *Wilbur v. City of Mount Vernon*,[68] which held that an absence of adversarial testing violates the constitution. Baer is very familiar with legal developments that require consideration of juvenile brain science principles in representing juveniles. Baer has observed the County juvenile court on the dates listed in her Report. She has reviewed the court files and defender case files for each case when she observed court where the lead juvenile public defender represented the child, as well as a number of court files in other cases.

The OPD witnesses are also public defense experts. Moore has served as executive director of OPD for 20 years, George Yeannakis has been a practicing juvenile public defender

[64] Ex. 5 (Kleespie Dep.) at 5:19-6:2; Ex. 4 (GH 30(b)(6) Dep.) at 87:6-88:2.
[65] Ex. 4 (GH 30(b)(6) Dep.) at 52:21-53:21.
[66] Ex. 4 (GH 30(b)(6) Dep.) at 104:25–105:11.
[67] The evidence in this section is based largely on Simmie Baer's Expert Report.
[68] 989 F. Supp. 2d 1122 (W.D. Wash. 2013).

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

for years and is a nationally known expert on the topic, and Katrin Johnson has been a practicing public defender for years in addition to her work for OPD's trial improvement program which seeks to improve county public defense operations.[69] Yeannakis and Johnson observed juvenile court in the County a total of a half dozen times.[70]

Plaintiffs' expert, Baer, has concluded that the juvenile public defender in the County is not acting as counsel for the accused. Baer's conclusion is based on multiple failures to conduct the basic tasks of constitutionally adequate representation, as detailed in her Report filed in conjunction with this Motion. The standard by which Baer measures the constitutional right is in large part corroborated by testimony of OPD witnesses. OPD witness Johnson was asked at her deposition what, in her experience as a public defender and as staff at OPD, is "meaningful adversarial testing." She testified:

> Well, certainly it would include defense counsel doing an analysis on the discovery provided by the state, and consulting with their clients about the discovery so the clients are aware of what's available. Using investigative services for questioning witnesses, questioning police officers, questioning other witnesses, getting information, records, any information that could be helpful to the case. But, you know, not just passively taking the police report and relying on that as the official story of what occurred. Then of course litigating it, bringing motions or going to trial or using information found within negotiations, but again taking more of an active approach rather than a passive approach of here's the police report, here's the offer.[71]

The other OPD deponents gave similar answers, both identifying regular and meaningful communication with juvenile defendants as critical due to their age and vulnerability, and the need for adequate independent investigation of a case, as necessary to a functioning adversarial system.[72] As to the main specific deficiencies:

Failure to stand with and speak for the client: Baer's Report describes how the County public defender often does not stand with her clients while they are talking with the judge and

---

[69] Ex. 1 (OPD 30(b)(6) Dep.) at 5:16–21; Ex. 2 (Yeannakis Dep.) at 14:21–15:14, 19:18–21:9; Ex. 3 (Johnson Dep.) 20:14–22:2.
[70] Ex. 2 (Yeannakis Dep.) at 118:17–119:9.
[71] Ex. 3 (Johnson Dep.) at 39:16–40:13.
[72] Ex. 1 (OPD 30(b)(6) Dep.) at 57:19–58:11; Ex. 2 (Yeannakis Dep.) at 35:9–37:12.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

the judge is interrogating the clients.[73] Thus children are required to speak for themselves, and often self-incriminate, rather than having a lawyer to speak for them.[74] Yeannakis confirmed seeing the County juvenile public defenders fail to stand with their clients for the entire court session, forcing each child to stand in front of the judge alone.[75] This witness also observed public defender Kleespie fail to speak on behalf of her juvenile clients, leaving them to answer substantive questions from the judge without any objection.[76]

Lack of individualized investigation as to factual and legal defenses and mitigation evidence: Baer observed virtually no evidence that the public defender has done an independent investigation of the clients' lives, needs, assets and deficits, or that the defender has conducted investigation of the charges detailed in the police report or other materials provided by the prosecution.[77] Baer finds no evidence that the juvenile public defender obtains school records or other records or information about her clients to present to the court.[78] Rather, the defender relies virtually exclusively on information provided by the probation officer or prosecutor, or by the clients' families.[79] Baer states that a person fulfilling the constitutional right to a lawyer would not rely on information provided by opposing officials, but would do independent investigation of the case and about the client.[80] OPD witness Yeannakis agreed that in at least one case he observed it was clear the juvenile public defender failed to investigate the facts.[81] He also testified that a public defender's failure to investigate clients' cases constitutes a lack of an adversarial system and risks clients being falsely convicted.[82] The specific case examples described above and in Baer's Report also corroborate the lack of investigation by the County juvenile public defender.

Lack of challenges to bail amounts, pretrial detention, and probation violations: Baer

---

[73] Expert Report at 1, 8.
[74] *Id.*
[75] Ex. 2 (Yeannakis Dep.) at 150:18–151:8.
[76] Ex. 2 (Yeannakis Dep.) at 153:20–154:21.
[77] Expert Report at 6.
[78] Expert Report at 6-7.
[79] *Id.*
[80] Expert Report at 5.
[81] Ex. 2 (Yeannakis Dep.) 151:9–14.
[82] Ex. 2 (Yeannakis Dep.) at 36:3–19.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

states that a person acting in compliance with the constitutional right to a lawyer would also work to minimize the time that a client spends in detention, from the beginning of a case, because detention in a jail-like setting is particularly harmful for children.[83] Yet Baer finds the juvenile public defender in the County makes little effort to minimize detention time or advocate for release. Many juveniles are brought before the judge on alleged violations of probation conditions, often for common adolescent behavior reflecting the excessiveness of the conditions.[84] Based on the record in this case, juveniles are virtually always given the maximum punishment of 30 days in detention for such violations. Yet the public defender does not make individualized arguments for particular clients or test the evidence presented by the probation officer.[85] Instead, she allows the juvenile to admit the violation and provide further incriminating evidence in response to the judge's questions.[86] Baer observed no alternative sources of information, investigation, or explanation provided by the public defender in these hearings.[87]

OPD witness Yeannakis corroborated that the bail amounts he has seen in the County juvenile court have been high, and have gone unchallenged by the juvenile public defender.[88] They confirmed that the juvenile detention rate in this county is greater than almost any other in the state.[89] They agreed there is a persistent problem in this county of juveniles being detained for longer periods than necessary to accomplish any real goal of rehabilitation, and agreed judges uniformly give most or maybe all juveniles 30 days of detention at any modification hearing.[90] OPD witnesses confirmed that juveniles who are detained while their case is ongoing have a statistically higher chance of being jailed at the end of their case than those who are not in custody, and expressed concern that children in custody are easily preyed upon by detention staff and other kids, partially due to the wide range of ages that are mixed together in a close

[83] Expert Report at 5.
[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] Ex. 2 (Yeannakis Dep.) at 129:1-22.
[89] Ex. 2 (Yeannakis Dep.) at 127:15–128:4.
[90] Ex. 2 (Yeannakis Dep.) at 127:15–128:25, 130:18–132:19.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

environment in this county's detention facility.[91] Yeannakis also noted the harm children suffer in being removed from school and deprived of parental interaction while detained.[92] He agreed these forms of harm from detention demonstrate why it is important for juvenile public defenders to challenge bail for their clients.[93]

Lack of motions to suppress statements to police: Baer observed no evidence of pretrial motions one would typically find in at least some of a defender's case files in juvenile prosecutions.[94] In particular, motions were never brought to challenge juveniles' frequent statements to police.[95] Public defender Kleespie testified that the majority of her clients had talked to the police in a variety of settings and agreed that any motions she filed would be contained in her case files.[96] Yet no motions to suppress statements to police were found in the files Baer reviewed.[97]

Lack of individualized advocacy; rare trials; pattern of a "meet and plead" system: Baer reports that in many cases, the juvenile is charged with a felony and pleads guilty shortly thereafter.[98] Often, the public defender advises clients to agree to a deferred disposition, but with stringent conditions.[99] The child is then held in detention for 30 days at a time, sometimes repeatedly, for violating a condition.[100] Baer saw little evidence that real plea negotiations occurred, or that these pleas were entered after reasonable investigation.[101] In Baer's experience, attention to the actual charges, the circumstances of the juvenile, and other matters of legal analysis and investigation can provide a basis for either going to trial or negotiating much more favorable plea agreements than pleading guilty to a felony as charged.[102]

In contrast to the individualized advocacy required by the constitutional right to counsel,

---

[91] Ex. 2 (Yeannakis Dep.) at 129:15–130:17.
[92] Ex. 2 (Yeannakis Dep.) at 130:9–17.
[93] Ex. 2 (Yeannakis Dep.) at 129:15–130:17.
[94] Expert Report at 6.
[95] *Id.*
[96] Ex. 5 (Kleespie Dep.) at 90:5–15, 91:22–92:19.
[97] Expert Report at 6.
[98] Expert Report at 7.
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.*

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

one OPD witness testified that in the County it was "hard to tell who was the prosecutor and who was the defender;" two OPD witnesses also confirmed the importance of the public defender spending more time with juvenile clients.[103] OPD witness Johnson agreed adequate client communication is required by WSBA standards for indigent defense services and the WSBA performance guidelines for criminal defense attorneys.[104] OPD witnesss Yeannakis agreed that failing to properly educate a juvenile client to ensure they understand their rights, and why they should or should not waive rights likely amounts to ineffective assistance of counsel.[105]

Lack of individualized sentencing advocacy supported by individualized investigation: In the files Baer reviewed, there have been no memoranda for sentencing as would be expected from juvenile defenders; public defender Kleespie admitted she rarely files sentencing memos.[106] Baer saw no evidence that the juvenile defender, either in writing or at the time of the hearing, sought to advocate for a mitigated sentence by providing the court with alternative information.[107] She saw no evidence that the juvenile public defender ever brought into the courtroom the current common understanding of juvenile brain development and how that affects behavior.[108] OPD witness Yeannakis confirmed both that he is aware juveniles regularly must serve 30 days for probation violations in the County, without individualization, and that a juvenile public defender who does not raise the differences between juvenile and adult defendants in advocating less detention time is "probably being ineffective."[109]

C. OPD's knowledge of defects in the County's juvenile public defense system and failure to take oversight action

As touched on above, OPD has for years had specific knowledge about serious deficiencies in the County's juvenile defense system. OPD knew that the former public defender refused to file the motion to free M.D. from the illegal 120-day probation violation sentence and

[103] Ex. 2 (Yeannakis Dep.) at 36:3–37:12, 117:3–21, 121:16–122:25; Ex. 3 (Johnson Dep.) at 97:5–101:24.
[104] Ex. 3 (Johnson Dep.) at 97:5–101:2.
[105] Ex. 2 (Yeannakis Dep.) at 32:10–33:20.
[106] Ex. 5 (Kleespie Dep.) at 137:21–138:15.
[107] Expert Report at 7-8.
[108] *Id.*; Ex. 5 (Kleespie Dep.) at 31:10–25 (acknowledging lack of familiarity with juvenile brain science cases).
[109] Ex. 2 (Yeannakis Dep.) at 31:22–33:20, 130:19–132:19.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

that the prosecutor had to file the motion. OPD knew that the current defender failed to timely file a mandatory motion to determine capacity for named plaintiff K.B. and, through a lengthy letter from her grandmother, of other serious complaints about the system. OPD also has known for several years that there are systemic problems with the juvenile defense system in the County as detailed below.

Every year that the County applies for and receives state funding under RCW 10.101, the County submits with its application to OPD the juvenile public defense contracts and other data regarding the juvenile public defense system.[110] OPD's administration of the program requires it to determine each county's annual eligibility for the grant; if a county is determined not to "substantially comply" with the requirements of RCW 10.101, OPD "shall" notify the county and if the county fails to cure, its eligibility for funds "is terminated." RCW 10.101.060(2). The statute also provides the authority to inquire about how grant funds are used – authority OPD has used regarding the County in 2014 and 2016, when it learned more about the County's deficiencies.[111] Yet OPD Director Moore admitted that OPD has never raised questions, in the grant process or otherwise, about the following deficiencies in the County's juvenile public defense system.[112] As to specific deficiencies OPD has been made aware of:

Lack of Adversarial Testing – As detailed above, OPD has for several years known that juvenile defenders in the County fail to stand with clients, allow judicial interrogation of clients without intervention, fail to investigate or file motions an attorney acting as an advocate would file, do little to challenge high bail amounts or advocate for release, fail to adequately consult with clients, and conduct little advocacy on probation violations that usually result in 30-day sentences to detention. OPD has known this both through complaints made to OPD and through observation by OPD staff.

Lack of public defense independence and pressure from the court – According to OPD juvenile expert Yeannakis, juvenile defenders in the County are under pressure from judges, as

---

[110] *See* Ex. 35.
[111] Ex. 40.
[112] Ex. 1 (OPD 30(b)(6) Dep.) at 100:7–21.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

well as prosecutors, not to advocate for their clients.[113] The County standards ordinance OPD receives with the grant applications (Resolution 2008-160) states judges "alone" select the public defense contractors.[114] OPD witnesses testified that a system where judges effectively select the public defenders and oversee that process may lead to an environment where the public defender makes decisions to keep themselves in favor with the judge, rather than to vigorously advocate for their clients' rights; such a system creates a dangerous conflict of interest, and two OPD witnesses agrees it is a systemic issue in the County.[115] OPD knows from the County's grant applications over the years that the county has kept the same defense contractors for years, at the same rate of pay.[116]

Lack of evaluation, supervision, and monitoring, required by RCW 10.101.030 – In 2008, the Grays Harbor Board of County Commissioners passed a resolution purporting to support compliance with state public defense standards.[117] Despite the statute specifically requiring that the standards must include evaluation, supervision, and monitoring of a county's public defense system, RCW 10.101.030, the County's resolution does not mention any of these mandatory topics as OPD's Director admitted.[118] She testified that "evaluations and monitoring are a central part of quality representation."[119] She also confirmed that client communication is critically important, especially for accused juveniles.[120] The County told OPD in a 2016 meeting that the only oversight of juvenile public defense is the judge's courtroom observation.[121] OPD witness Yeannakis agreed this constitutes a systemic problem.[122]

The County does not even have a publicly-known system for addressing complaints about the juvenile public defense system, as required by RCW 10.101.030 and described in the

---

[113] Ex. 2 (Yeannakis Dep.) at 155:7–156:10, 149:2-150:14.
[114] Ex. 41 at 1.
[115] Ex. 2 (Yeannakis Dep.) at 113:20–114:5, 149:2-150:14; Ex 3. (Johnson Dep.) at 96:4–97:4; Ex. 1 (OPD 30(b)(6) Dep.) at 50:10–51:11.
[116] *See* Ex. 35; Ex. 43; Ex. 4 (GHC 30(b)(6) Dep.) at 45:5–46:5; Ex. 5 (Kleespie Dep.) at 44:14–45:20.
[117] Ex. 41.
[118] Ex. 41; Ex. 1 (OPD 30(b)(6) Dep.) at 66:1–16.
[119] Ex. 1 (OPD 30(b)(6) Dep.) at 38:23–39:17.
[120] Ex. 1 (OPD 30(b)(6) Dep.) at 56:21–58:11.
[121] Ex. 40; Ex. 1 (OPD 30(b)(6) Dep.) at 62:6–63:19.
[122] Ex. 2 (Yeannakis Dep.) at 113:8–114:5.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

county's 2008 standards resolution.[123] When OPD asked the County about its system for receiving such complaints, the county said people can raise complaints with the judge but admitted no one is ever told that a complaint system exists.[124]

Despite OPD knowing these systemic and large-scale deficiencies in advocacy, OPD has never suggested the County make changes, let alone required the County to act.

III. ISSUE PRESENTED

Does the State's constitutional obligation to provide the "assistance of counsel" require the State of Washington, on this record, to take action to remedy the constitutional defects in the County's juvenile public defense system?

IV. AUTHORITY

This Motion shows that, as a matter of law, the State of Washington bears the ultimate burden to remedy systemic violations of the constitutional right to counsel. Moreover, the material facts above demonstrate that the County's juvenile public defense system is constitutionally-defective and that these defects are known to the State. Therefore, as a matter of law, the State is empowered and required to act to remediate the unconstitutional system. When the moving party meets the burden of showing the absence of material fact, the burden shifts to the opposing party to establish such a material issue of fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989), *overruled on other grounds by* 130 Wn.2d 160, 922 P.2d 59 (1996). Because the State will be unable to satisfy this burden, the Motion should be granted.

A. The State's duty to comply with the constitutional right to counsel requires "adversarial testing" and a "guiding hand," especially for juveniles

1. The Constitution requires that public defense systems provide meaningful adversarial testing of the prosecution's case

The right to counsel is guaranteed by both the U.S. Constitution and Washington's State Constitution. U.S. CONST. amend. VI; WASH. CONST. ART. I, § 22. This right is fundamental and essential to the provision of a fair trial, and the states have a duty to protect it. *Gideon v.*

[123] Ex. 35 at 14; Ex. 5 (Kleespie Dep.) at 70:8–71:10.
[124] Ex. 40; Ex. 1 (OPD 30(b)(6) Dep.) at 62:6–63:3.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

Wainwright, 372 U.S. 335, 342–45, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963). "The right of effective counsel . . . [is] fundamental to, and implicit in, any meaningful modern concept of ordered liberty." *State v. A.N.J.*, 168 Wn.2d 91, 96, 225 P.3d 956 (2010).

The constitutional right to counsel entails much more than checking a box indicating that a defendant "has a lawyer." The Constitution requires a lawyer who *advocates* for the accused:

> The text of the Sixth Amendment itself . . . requires not merely the provision of counsel to the accused, but "Assistance," which is to be "for his defence." . . . If no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated. .."*The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment*." *Avery v. Alabama*, 308 U.S. 444, 446, 60 S. Ct. 321, 322, 84 L. Ed. 377 (1940) (footnote omitted).
>
> . . . Thus, the adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate." *Anders v. California*, 386 U.S. 738, 743, 87 S. Ct. 1396, 1399, 18 L. Ed. 2d 493 (1967). *The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing.*

United States v. Cronic, 466 U.S. 648, 654–56, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) (emphasis added) (footnotes omitted); *see also A.N.J.*, 168 Wn.2d at 98 (Constitution guarantees "not just an appointment of counsel, but also effective assistance of counsel").

The U.S. Supreme Court has described what the actual "assistance" of counsel means for juveniles facing accusations of criminal behavior and loss of liberty:

> [a] proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."

In re Gault, 387 U.S. at 36 (footnotes and citations omitted).

As shown in the Statement of Facts, OPD is well aware of what tasks are required in order to satisfy the constitutional requirement of "meaningful adversarial testing" in respect to juvenile cases, *Cronic*, 466 U.S. at 654, including regular and meaningful communication with juvenile defendants as critical due to their age and vulnerability, and the need for adequate independent investigation of a case. OPD's description is consistent with all other authorities

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

discussing the right to counsel, including Washington standards and guidelines for the conduct of criminal and juvenile defense. For example, the Washington Supreme Court requires juvenile defenders to be "familiar with," among other things, "the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association and when representing youth, be familiar with the Performance Guidelines for Juvenile Defense Representation approved by the Washington State Bar Association." JuCr 9.2 Stds, Standard 14, specifying "Qualifications of Attorneys." *See* Exhibits 44 and 45. They specify the same basic defense functions that OPD officials—and Plaintiffs' expert— have identified as crucial to adversarial testing, and add one function that OPD overlooked: The "obligation to attempt to secure the pretrial release of the client" if at all possible. Exhibit 44 at 5–8 (Guideline 2).[125] As discussed below, the evidence shows the County's juvenile public defense system violates the right to counsel, and OPD knows of the deficiencies that create this constitutional violation.

2. Compliance with the constitutional right to counsel must take account of the special circumstances of children's cognition, and the greater harms they suffer when accused

The basic tasks OPD and all of the standards recognize as necessary are the minimum required to fulfill the constitutionally required "assistance of counsel." But a constitutionally compliant juvenile public defense system requires *more* to provide "assistance" and "counsel" (and "meaningful" adversarial testing) to this vulnerable and immature population. This practical reality is recognized by the State in the need for juvenile defenders to undergo special training regarding the science of juvenile brain development, special care that juveniles understand the consequences of pleading guilty, and take other steps required to provide actual representation. *See* Ex. 45 (WSBA Juvenile Offense Representation Guideline 2.2) at 6. The Preface to Washington's juvenile offense practice guidelines makes explicit that juveniles' lack of full capacity and understanding of what they face is key:

> …[T]he unique qualities of youth demand special training, experience and skill for their advocates. For example, although the need to develop an attorney-client relationship is

[125] Failure to adhere to standards, while not conclusive, is relevant evidence in consideration of constitutional claims regarding counsel, to be considered with other evidence. *A.N.J.*, 168 Wn.2d at 110.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

> the same whether an attorney is representing an adult or a child, the juvenile defense advocate's approach to developing the necessary trust-based relationship differs when the client is a child. 'Because the client in juvenile court is a minor, counsel's representation is more expansive than that of a criminal defense lawyer for an adult. Lawyers for children must be aware of their clients' individual and family histories, their schooling, developmental disabilities, mental and physical health, and the client's status in their communities in order to assess their capacities to proceed and to assist in their representation. Once those capacities are understood, the lawyer must vigorously defend the juvenile against the charges with that capacity in mind, and then prepare arguments to obtain rehabilitative treatment should the child be found guilty.

Id. (quoting U.S. Department of Justice's Statement of Interest, filed March 13, 2015 in *N.P. vs. State of Georgia*, Superior Court of Fulton County No. 2014-CV-241025).

This need for special care in defending juveniles is especially true given the very serious consequences of both prosecuting and incarcerating children and youth, even for brief periods. OPD fully recognizes these harms and consequences.[126] The proven harms to children include harm to their future health, significant disruption of educational opportunities, and increased likelihood of adult incarceration.[127] Any meaningful assistance of counsel to juveniles must be informed by these grave lifetime consequences.

Washington law recognizes children's lesser understanding of adult legal concepts. *See Bauman ex rel. Chapman v. Crawford*, 104 Wn.2d 241, 244–45, 704 P.2d 1181 (1985) ("the child's standard of care allows for the normal incapacities and indiscretions of youth."). And in the criminal context, the Constitution demands recognition of children as different:

> More recent Supreme Court cases have clearly reaffirmed that there are measurable and material differences between juveniles and adults that have constitutional implications. … The Supreme Court's case law clearly shows that treating juveniles and adults the same way in all respects is not only unwise but sometimes unconstitutional.

State v. S.J.C., 183 Wn.2d 408, 412, 352 P.3d 749 (2015) (surveying cases and harmful

---

[126] Ex. 1 (OPD 30(b)(6) Dep.) at 58:15–62:3; Ex. 2 (Yeannakis Dep.) at 129:15–132:19.

[127] *See, e.g.*, Elisabeth S. Barnert, et. al, *How does Incarcerating Young People Affect Their Adult Health Outcomes?*, Pediatrics, Volume 139, No. 2 (February 2017) at http://pediatrics.aappublications.org/content/pediatrics/139/2/e20162624.full.pdf; David S. Kirk and Robert J. Sampson, *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood.* Sociology of Education Vol. 86 36-62 (2013), at http://www.asanet.org/sites/default/files/savvy/journals/soe/Jan13SOEFeature.pdf; Anna Aizer and Joseph J Doyle, *Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges*, The Quarterly Journal of Economics 130:2, 759-803 (2015) abstract at http://www.nber.org/papers/w19102.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

consequences of juvenile offender records); *State v. Scott*, 190 Wn.2d 586, 603, 416 P.3d 1182 (2018) ("[t]he Eighth Amendment….compels us to recognize that children are different").

The right to counsel for children must be interpreted in light of these clear mandates regarding the status, capacity and development of children.

B. The constitutional duty to provide "assistance of counsel," particularly for juveniles, belongs to the State

1. The State cannot abdicate its constitutional duty, even if it has designated political subdivisions to perform many public defense functions

The State itself, not its political subdivisions, bears the ultimate responsibility to ensure the assistance of counsel that is required by the Constitution. Several state courts have held that a state may not wholly delegate this constitutional duty to governmental subdivisions. *See, e.g.*, *Tucker v. State of Idaho*, 162 Idaho 11, 394 P.3d 54, 66 (2017) ("[w]hile the provision of public defense has been delegated to Idaho's forty-four counties . . . 'the ultimate responsibility for fulfilling the . . . constitutional duty cannot be delegated"') (quoting *Osmunson v. State*, 135 Idaho 292, 17 P.3d 236, 240 (2000)); *Hurrell-Harring v. New York*, 15 N.Y.3d 8, 930 N.E.2d 217, N.Y.S.2d 296 (2010) (there is no constitutional or statutory mandate better established than the State's duty to provide legal representation to indigent criminal defendants at all critical stages of proceedings); *Duncan v. State*, 284 Mich. App 246, 267-68, 288, 340-41, 774 N.W. 2d 89 (2009) (counties required to operate and fund courts and public defense, but this "does not relieve" the state of "constitutional duties under *Gideon"* and counties do not need to be parties to suit), *affirmed in part on other grounds*, 486 Mich. 906, *vacated*, 486 Mich. 1071, *affirmance in part reinstated*, 488 Mich. 957, *reconsideration denied*, 488 Mich. 1011 (2010) (permitting case against state to proceed in Michigan); *see* also trial court decision in *Phillips v. California* (Fresno County, CA Superior Court 2016).

In *Tucker*, the Supreme Court of Idaho ruled that the Fourteenth Amendment left no question that "[t]he State . . . has ultimate responsibility to ensure that the public defense system passes constitutional muster." *Tucker*, 394 P.3d at 66. Idaho's statutory public defense scheme is similar to Washington's—counties bear substantial responsibility and must themselves provide

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

frontline indigent defense services. *Id. See* Idaho Code §19-859. Nevertheless, the court held that Idaho's analogue to OPD, the Idaho State Public Defense Commission, had authority to implement Idaho's constitutional duty to provide effective assistance of counsel and remedy deficiencies by requiring the offending "county to explain how the failure will be remedied." *Tucker*, 394 P.3d at 69.

These principles apply equally to Washington State. The State may constitutionally require counties to perform some public defense functions, but cannot abdicate the ultimate duty to ensure the constitutionally required "assistance of counsel" for those who cannot afford to pay for representation. OPD Director Joanne Moore has testified to the same effect, and written exactly this.[128]

Furthermore, for purposes of providing the "assistance of counsel," counties are not independent entities but are agents of the State. The Washington Constitution recognizes counties as both "legal subdivisions" that are local agents of the state, and as municipal corporations with legal authority to exercise general police regulatory powers. WASH. CONST. ART. XI, §§ 1, 11. "…[C]ounties [are] political subdivisions of the State exercising involuntary or mandatory duties, as distinguished from voluntary duties that municipal corporations may exercise at their option." Steve Lundin, *The Closest Governments to the People*, Washington State University and self-published, at http://mrsc.org/getmedia/1c25ae05-968c-4edd-8039-af0cf958baa7/Closest-Governments-To-The-People.pdf.aspx?ext=.pdf at 83-84 (quoting *State, ex rel. Summerfield v. Tyler*, 14 Wash. 495, 499, 45 P. 31 (1896)). There is no function that is more clearly a constitutionally mandated *state* duty than the provision of public defense. The State of Washington has ordered counties to implement the requirements of the right to counsel, and the counties are plainly agents of the State, not independent entities, for this purpose. RCW Chapters 10.101 and 36.26.

[128] Ex. 1 (OPD 30(b)(6) Dep.) at 87:6–88:5; Ex. 46.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

2. The right to the assistance of counsel is a positive constitutional right and the State must provide more than the mere appointment of counsel

Crucially, the right to counsel is not a limitation on what the State can do to its citizens, but rather a demand that the State take action to protect its citizens from facing alone the drastic consequences of prosecution. *See Avery v. Alabama,* 308 U.S. 444, 446, 60 S. Ct. 321, 322, 84 L. Ed. 377 (1940) ("the guarantee … cannot be satisfied by mere formal appointment"); *United States v. Cronic,* 466 U.S. at 655 (the right includes requiring "the prosecution's case to survive the crucible of meaningful adversarial testing"); *State v. A.N.J.,* 168 Wn.2d at 98 ("not just an appointment of counsel, but also effective assistance of counsel"). Thus the right to counsel is a *positive* constitutional right. Jenna MacNaughton, *Positive Rights in Constitutional Law: No Need to Graft, Best Not to Prune,* 3 U. PA. J. CONST. L. 750, 762 (2001) https://scholarship.law.upenn.edu/jcl/vol3/iss2/5 (positive rights, including the right to counsel, "require some affirmative act by the government to fulfill them").

Positive constitutional rights empower the courts to order the State to take action when the right is being violated. The Washington Supreme Court has explained that courts must determine whether the State has abdicated its duty to secure positive constitutional rights:

> The vast majority of constitutional provisions, particularly those set forth in the federal constitution's bill of rights and our constitution's declaration of rights, are framed as negative restrictions on government action. With respect to those rights, the role of the court is to police the outer limits of government power, relying on the constitutional enumeration of negative rights to set the boundaries. *See* Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review,* 112 HARV. L. REV. 1131, 1137 (1999).
>
> This approach ultimately provides the wrong lens for analyzing positive constitutional rights, where the court is concerned not with whether the State has done too much, but with whether the State has done enough. Positive constitutional rights do not restrain government action; they require it. The typical inquiry whether the State has overstepped its bounds therefore does little to further the important normative goals expressed in positive rights provisions. …[I]n a positive rights context we must ask whether the state action achieves or is reasonably likely to achieve "the constitutionally prescribed end." Hershkoff, *supra,* at 1137.

McCleary v. State, 173 Wn.2d 477, 519, 269 P.3d 227 (2012). *See also Braam ex rel. Braam v. State,* 150 Wn.2d 689, 710, 81 P.3d 851 (2003) (courts have broad powers to require an adequate

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

response from government when dealing with constitutional rights of, in that case, children). In positive rights cases, the judiciary must require the appropriate parts of state government to act in ways that will adequately implement the right. *McCleary, supra; Tucker,* 394 P.3d at 72 (discussing role of court, legislature and agencies in systemic cases involving rights to counsel, adequacy of education, and reapportionment).

Because the right to counsel is a positive constitutional right and the State bears the ultimate responsibility for guaranteeing the right, the question before the Court is whether the State (not a county) has "done enough" to "achieve[]" or is "reasonably likely to achieve" the "constitutionally prescribed end." Here, the constitutionally prescribed end is a juvenile public defense system in the County that achieves "meaningful adversarial testing." Given the glaringly obvious constitutional deficiencies in County juvenile court, the State—despite knowledge of these major defects—has not done nearly enough. The County's juvenile public defense system violates the constitutional right to counsel, in ways known to OPD but remains un-remedied, requiring this Court's declaration of the State's authority and duty to act.

C. The County's juvenile public defense system violates the constitutional right to counsel in ways known to OPD, yet to date un-remedied, requiring this Court's declaration of the State's authority and duty to act

1. The County's juvenile defense system fails to provide meaningful adversarial testing, resulting in significant and large-scale harm to children

As detailed in the Statement of Facts, the County's juvenile public defense system is the equivalent of no counsel at all, and children are being harmed by unnecessary time in detention and prison as well as adverse records that can follow them for a lifetime. The forms of constitutional violation, shown above, include: The County's lack of any system for monitoring, evaluation, or oversight of juvenile defenders, including lack of time records; continuing to award the contract to attorneys who perpetuate lack of adversarial testing (not standing with or speaking for clients, allowing clients to make admissions, failing to challenge extreme bail amounts, failing to conduct minimally adequate sentencing advocacy, and failing to even cursorily investigate charges before pleading clients guilty or allowing them to be detained on

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

probation violations, let alone challenging statements to police, looking into family history, or schooling, or paying reasonable attention to clients' special needs as specified in the WSBA guidelines); and, failing to provide for independence of the public defenders.

This system does not provide *advocacy* or, as stated by the Supreme Court, "meaningful adversarial testing" of the serious charges against juveniles, many of which could result in years of incarceration. Nor is there serious advocacy on the many probation violations that result in many children serving 30 days in detention for relatively minor behavior that is virtually normal for teenagers. The County's juvenile defense system is thus like the system described in *Wilbur v. City of Mount Vernon:*

> The attorney represents the client in name only…having no idea what the client's goals are, whether there are any defenses or mitigating circumstances that require investigation, or whether special considerations regarding immigration status, mental or physical conditions, or criminal history exist. Such perfunctory 'representation' does not satisfy the Sixth Amendment.

989 F. Supp. 2d 1122, 1128, 1131-32 (W.D. Wash. 2013) (systemic adversarial testing under *Cronic* lacking where "shockingly low" number of defense files showed there had been investigation, research, or cases set for trial); *see also Childress v. Johnson*, 103 F.3d 1221, 1224, 1231 (5th Cir. 1997) (counsel of "little or no[] assistance…" and "appointed counsel in the county "routinely failed to discuss strategy with their clients, research the law, investigate the facts, or otherwise go to bat for the accused;" in violation of *Cronic*, counsel "…was not the advocate for the defense whose assistance is contemplated by the Sixth Amendment."); *Gardiner v. United States*, 679 F. Supp. 1143 (D. Me. 1988) (failure to speak on defendant's behalf at sentencing constituted constructive denial of assistance of counsel altogether under *Cronic*).

Moreover, this breakdown of any serious adversarial testing is not the problem of one attorney, even though the current attorney demonstrates the constitutional flaws. The system itself has been deficient for years, before the current attorney was given the contract. The County's lack of any monitoring or evaluation system violates RCW 10.101.030, the American Bar Association's *Ten Principles Of A Public Defense Delivery System*, and the WSBA Standards for Indigent Defense Services, Standards 10 and 11. Ex. 47 at 3 (Principle 10); Ex. 48

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

at 11-12 (Standards 10, 11). And the continued lack of independence of the system and pressure to conform to a culture of non-advocacy is contrary to the very first ABA principle.[129]

This system of non-advocacy and lack of any accountability or quality control causes tremendous harm. Children are likely kept in detention when they do not need to be; they are ill-informed about the consequences of pleading guilty and other major legal decisions; and they are sentenced to time in prison and saddled with criminal records that should be lessened; some are no doubt denied a defense altogether by lack of investigation. *See A.N.J.*, 168 Wn.2d at 98-99 ("It is clear, even if not calculated, that the prosecution benefits from a system that discourages vigorous defense and creates an economic incentive for indigent defense lawyers to plea bargain."). The County's juvenile system provides counsel in name only, and systemically lacks adversarial testing. As such, it is plainly unconstitutional.

2. OPD knows of the County's constitutional failures; the State must act

As shown extensively above, OPD (and therefore the State) has known for years about virtually all of the deficiencies—both systemic and in the courtroom—of the County juvenile defense system. OPD has known much about non-advocacy for children and of a system set up to support and encourage a lack of advocacy. OPD is well aware of the lack of monitoring or evaluation and pressures against providing real advocacy for clients. And OPD knows the essential facts about the lawyers in this deeply flawed system, who for years simply have not represented their clients through failures to investigate, to challenge high bail amounts, to see clients in time, to take action in time to prevent unnecessary detention, and to file motions that any lawyer would file. OPD even knows about the current lawyer failing to stand with clients while judges interrogate children about what they might have done.

This record demonstrates the need for judicial intervention to protect constitutional rights. The *Wilbur* court recognized that to prevail in a public defense case the plaintiffs had to show "irreparable injury and the lack of available legal remedies" but that this burden was "easily met"

[129] Both of these deficiencies are well known to OPD, and OPD officials agree that these are major systemic flaws. Ex. 2 (Yeannakis Dep.) at 113:20–114:5, 149:2-150:14, 155:7–156:10; Ex 3. (Johnson Dep.) 96:4–97:4; Ex. 1 (OPD 30(b)(6) Dep.) 50:10–51:11, 66:1–16; Ex. 40.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

when plaintiffs had proven systemic lack of adversarial testing:

> the lack of an actual representational relationship and/or adversarial testing injures both the indigent defendant and the criminal justice system as a whole. The exact impacts of the constitutional deprivation are widespread but difficult to measure on a case by case basis, making legal remedies ineffective.

989 F.Supp. 2d at 1133. Plaintiffs have shown the same here.

On this record, the State will be unable to show the existence of a dispute on the material facts that demonstrate as a matter of law the unconstitutionality of the County juvenile defense system, or any dispute as to the State's knowledge of the constitutionally significant facts of the County's system. As is next shown, the State, as the party ultimately charged with the duty to provide for this constitutional right, must be ordered to provide a remedy.

D. The Constitution and Washington statutes require and empower the State to act, and ample authority demonstrates that this Court should so declare

The Constitution places on the State the ultimate duty to remedy an unconstitutional public defense system that is known and obvious to State officials. This mandate both requires and empowers the State, through OPD or otherwise, to act and this Court should so hold as a matter of law.

OPD was created by the Legislature "[i]n order to implement the constitutional and statutory guarantees of counsel and to ensure effective and efficient delivery of indigent defense services funded by the state of Washington…" RCW 2.70.005. In addition to the constitutional guarantee of "assistance" of counsel discussed above, a statutory demand for true "assistance" of counsel is found in RCW 10.101.005: "The legislature finds that effective legal representation must be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches."

Given the clear constitutional duty of the State to provide "assistance" of counsel and these statutory provisions, OPD has been designated by the Legislature to step in when it knows that a county is failing to provide the "assistance" of counsel. Yet OPD did not, even at a time

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

when it admits that the County's had systemic problems in the representation of juveniles (Ex. 1 (OPD 30(b)(6) Dep.) at 76:14-20; Ex. 2 (Yeannakis Dep.) at 10:24-11:5, 112:12-21), and has not currently, when virtually the same situation prevails though with a different lawyer, acted to change the facially deficient County system.[130] OPD has not even mildly suggested to the County that its system of juvenile defense is deficient. Ex. 1 (OPD 30(b)(6) Dep.) at 77:7-13.

Among its other duties, OPD is charged with conducting "oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas." RCW 2.70.020(4). This statutory subsection was added in 2008 and on its face *expanded* OPD's powers by adding the power to conduct "oversight." Laws of 2008, ch. 313. One of OPD's specific program areas is determining eligibility for and distributing to counties and cities money provided by the State to improve public defense under RCW Chapter 10.101.060-.090.

The State previously stated that 10.101 provides merely a pass-through of money that automatically goes to counties.[131] This is not true: The statute makes OPD far more than a passive conduit. Only counties that continue to be eligible may receive the money that has been allocated and OPD is specifically empowered to warn a county that they are not in substantial compliance and to cancel funding if the noncompliance continues. RCW 10.101.060(2). OPD is fully empowered to find the County out of compliance with the requirements for state funding and start the process of remediation. RCW 10.101.060(1)(a)(i) *requires* OPD to make sure that, among other things, a county has "a legal representation plan that addresses the factors in RCW 10.101.030." Yet the County's ordinance supposedly in conformity with section .030 does not include any mention of attorney evaluation or monitoring, and the County's applications to OPD for continued state funding concede year after year that there is no notification of a complaint process and no evaluation system. Ex. 41; Ex. 35. Yet despite these consequential, admitted

---

[130] The current juvenile defender has undergone some OPD training and OPD did become involved in trying to resolve two egregious County juvenile cases that came to OPD's attention, but OPD has said nothing *to the County* about the County's egregious deficiencies.

[131] "OPD's role is limited to *passing along* legislatively appropriated grant funds, as well as providing oversight and technical support to counties." Defs' Reply In Support of Mot for Partial Judgment on the Pleadings at 1 (emphasis added).

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

deficiencies that the State knows about and documents through its visits, OPD has not only failed to inform the County of any 10.101 deficiency, OPD has not raised with the County any issue regarding the County's system of juvenile defense.[132] OPD has also admitted that it would likely continue to extend funding even if a county was abjectly failing to meet its requirements. Ex. 2 (Yeannakis Dep.) at 74:21-75:15, 76:22-78:5; 87:23-88:12, 124:5-24, 148:7-15); Ex. 1 (OPD 30(b)(6) Dep. 13:10-23, 100:7-13, 108:15-110:23); Ex. 3 (Johnson Dep. 58:2-61:24, 107:24-108:6; 50:11-51:23).

When interpreting statutes like those at issue here, the court's duty is to "ascertain and carry out the Legislature's intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id*. at 9–10. The plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Id*. at 11; *accord*, *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 421, 432, 395 P.3d 1031 (2017). These cases require consideration of all the statutory sections in OPD's statutes. *Id.* at 438 ("plain language" analysis looks at "related provisions that illuminate legislative intent.").

Dictionary definitions of "implement," "ensure," "oversight," and "assistance" are further part of applying the plain meaning rule, *id.* at 435, 437-38, and provide additional support for concluding the statutes give OPD the authority in issue here. "Implement" means to "carry out, accomplish" and "to give practical effect to and ensure of actual fulfillment by concrete measures." LANGENSCHEIDT'S NEW COLLEGE MERRIAM-WEBSTER DICTIONARY 583 (1996). To "ensure" means to "make sure, certain, or safe" and to "guarantee." *Id.* at 386. "Oversight" means "regulatory supervision." *Id.* at 830.

"Plain language analysis also looks to amendments to the statute's language over time."

[132] OPD could determine that due to the known deficiencies, some of which appear on the face of the funding applications, the County is not in substantial compliance, but there is no evidence that has even been considered. Indeed, OPD fails to even have a working definition of "substantial compliance" beyond the statutes. Ex. 1. (OPD 30(b)(6) Dep. 65:14–22). The statute does not allow OPD to simply pass through the 10.101 funds, but OPD is very close to doing just that and ignoring its statutory responsibilities.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

Riverkeeper, 188 Wn.2d at 440. As noted above, OPD's authority was expanded in 2008 to add to its powers "oversight" of trial-court-level public defense. And recognizing OPD's authority to act is also consistent with a practical interpretation of the statute, *id.* at 444, since it enables the State to carry out its duties in enforcing the constitutional right to counsel.

In addition, the Legislature's statement of the purposes of OPD to ensure constitutional and statutory compliance with the right to counsel grants OPD powers to implement that charge. Authority to carry out an agency's core purposes is necessarily implied:

> Agencies have implied authority to carry out their legislatively mandated purposes. When a power is granted to an agency, "everything lawful and necessary to the effectual execution of the power" is also granted by implication of law. Likewise, implied authority is found where an agency is charged with a specific duty, but the means of accomplishing that duty are not set forth by the Legislature. Agencies also have implied authority to determine specific factors necessary to meet a legislatively mandated general standard.

Tuerk v. State Department of Licensing, 123 Wn.2d 120, 125, 864 P.2d 1382 (1994) (citations omitted). In *Brown v. Vail*, the Washington Supreme Court held that because the Superintendent of the Department of Corrections had the express duty to "supervise" executions by lethal injection, she also had the necessarily implied authority to establish the protocol by which lethal injection would be administered. 169 Wn.2d 318, 330, 237 P.3d 263 (2010). The Court noted that the appellants had underestimated the plain meaning of "supervise," which means not to passively observe and "plainly encompasses decision-making powers." *Id.* at 330–31.

RCW 2.70.005 gives OPD the express duty "to implement the constitutional and statutory guarantees of counsel and to ensure the effective and efficient delivery of indigent defense services funded by the state of Washington." The statutes also give the OPD Director explicit authority to "[p]rovide oversight and technical assistance to ensure the effective and efficient delivery of services in the office's program areas," which includes the RCW 10.101 funding. RCW 2.70.020(1)(a), (4); RCW 10.101.050.

There is no ambiguity in these statutes. "[A] statute is not ambiguous merely because it states a duty in general terms and provides an agency discretion to determine the ways in which

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

the duty may be met." *Wash. State Coalition for the Homeless v. Dep't of Social & Health Servs.*, 133 Wn.2d 894, 907, 949 P.2d 1291 (1997). And, respectfully, the Court is charged to apply all of the words of statutes, including statements of purpose and intent. *Spokane County Health Dist. v. Brockett*, 120 Wn.2d 140, 151, 839 P.2d 324 (1992) (holding that "the preamble or statement of intent can be crucial to interpretation of a statute") (citing *Roy v. Everett*, 118 Wn.2d 352, 356, 823 P.2d 1084 (1992)).

As in *Brown v. Vail*, OPD may not "passively observe" the known system breakdown in the County, especially given the active verbs the Legislature chose in describing OPD's duties. "To implement," "to ensure," and "to provide oversight and technical assistance" all encompass the authority to intervene in the delivery of indigent public defense services. Thus RCW 2.70.005 grants OPD the authority to intervene if the constitutional and statutory guarantees of counsel are not being upheld or the indigent defense services funded by the state are ineffective or inefficient. These express duties necessarily imply the authority to hold counties accountable for obvious and known constitutional or statutory violations.

Plaintiffs are aware of no action OPD or any state official has taken to even try to remedy this situation. Instead, OPD has claimed it can do nothing.[133] OPD has not even done what the Idaho Supreme Court ordered its commission to do, i.e., require the County to explain what it will do to fix its deficient system. Constitutional demands and the relevant Washington statutes do not allow—and they certainly do not require—the State to be passive in the face of this obvious systemic constitutional violation.

This Court, without benefit of the updated factual context contained in this motion, in effect ruled earlier in this case that OPD has no statutory authority to require the County to reform its system. Plaintiffs asserted then, and re-assert now with the benefit of developed

[133] Yeannakis Dep. at 74:21-75:15 (not aware of any specific remedy OPD could do in the face of a constitutional violation); 76:22-78:5; 87:23-88:12 (OPD does not monitor and purports to lack authority to require constitutional compliance); 124:5-24 (can offer training, but that has not resulted in improvement in the County); 148:7-15 (OPD aware of deficient complaint system in the County but lacks power to force change); Moore Dep. at 108:15-110:18; Johnson Dep. at 58:2-61:24 ("the state is not ensuring that the constitutional right to counsel is being met"); 107:24-108:6; 50:11-51:23 (OPD provides no oversight of public defense services).

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

factual record, that OPD's duties and powers must be viewed in light of the intersection of the demands on the State created by the Constitution and the language of the OPD statutes. As is shown above, the Constitution demands that the State has responsibility to act to change the situation in the County, and OPD is the agency designated to do it.

Indeed, as detailed above, OPD is the only agency required to enforce standards for public defense. Washington's system of public defense contains a patchwork of written standards in statutes and court rules, but for most of the standards there is no clear enforcement mechanism. Counties are required to "adopt" standards for public defense, RCW 10.101.030, but there is no requirement that counties enforce or implement the standards. *Compare* RCW 70.48.071 (counties must adopt jail standards and the jails "shall be operated in accordance with these standards"). The Washington Supreme Court has promulgated court rules with standards for public defenders and requirements for certification, CrR 3.1 CrRLJ 3.1 JuCR 9.2 Standards for Indigent Defense, but there is no enforcement mechanism for these rules that are explicitly only binding on attorneys and courts. By contrast, OPD is positioned and empowered to enforce compliance with many of these standards.

OPD's decision to take no action to try to change the known situation in the County is an egregious violation of its statutory duty to uphold standards, even if OPD's powers were limited to purely statutory duties. OPD has clear authority through both the Constitution and Washington statutes to take steps to remedy the known lack of adversarial testing in the County's juvenile public defense system.

And even beyond the RCW 10.101 funding process, OPD has ample statutory authority to investigate, write reports, talk to or write to the County's officials, state officials or legislators about the obvious deficiencies in the system, or to take other action to bring to light the terrible situation in the County that is harming children. Yet OPD has taken none of these obvious available actions. OPD's failure to act does not live up to its legislative mandate "to implement the constitutional and statutory guarantees of counsel," let alone the solemn constitutional duty of the State. OPD is constitutionally and statutorily obligated to move to require change in the

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

County.[134]

The State cannot decline to act in the face of knowledge of the unconstitutional system that is continually harming children in the County. The State is witnessing a continuous denial of constitutionally adequate representation for the County's children. To comply with its clear constitutional duty to remedy violations of the right to the "assistance" of counsel, and under OPD's statutory mandate, the State must be required to act.

V. CONCLUSION

Plaintiffs have requested a declaratory judgment that the State must act to fulfill its constitutional duty and to remedy the constitutional violation that it has allowed to continue despite knowing of the violation for many years. There is no issue as to any material fact and plaintiffs are entitled to this relief as a matter of law.

Alternatively, if the Court determines that there remain factual issues regarding whether the County's juvenile defense system is unconstitutional, the Court should grant partial summary judgment regarding the State's duty and authority to act to redress deficiencies at the county level. The State's duty is clear and yet is disclaimed by the State in this case. In the face of this disagreement, a declaration of rights is appropriate and legally supported. There is no genuine issue of fact that OPD, and therefore the State, has known of serious deficiencies in the provision of counsel in the County's juvenile court for years. Therefore, at a minimum, partial summary judgment is appropriate in the form of a ruling that the State must act to cure any constitutional violation that is established at trial. This is an issue of central importance in this case and an issue of public importance that should be decided before the parties are required to proceed to trial.[135]

[134] Plaintiffs respectfully urge that, accordingly, the Plaintiffs' statutory claims should be reinstated.

[135] *See Washington State Coalition for the Homeless*, 133 Wn.2d 894, 916-918, 949 P.2d 1291 (1997) (discussing prerequisites for and need for declaratory judgments in cases of public importance).

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

DATED this 5th day of October, 2018.

STOKES LAWRENCE, P.S.

By: */s/ Mathew L. Harrington*

Theresa H. Wang (WSBA #39784)
Mathew L. Harrington (WSBA #33276)
Lance A. Pelletier (WSBA #49030)
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Telephone: (206) 626-6000
Theresa.Wang@stokeslaw.com
Mathew.Harrington@stokeslaw.com
Lance.Pelletier@stokeslaw.com

and

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
John Midgley (WSBA #6511)
Nancy L. Talner (WSBA #11196)
Emily Chiang (WSBA #50517)
Breanne Schuster (WSBA #49993)
901 Fifth Avenue, Suite 630
Seattle, WA 98164
Telephone: 206.624.2184
jmidgley@aclu-wa.org
talner@aclu-wa.org
echiang@aclu-wa.org
bschuster@aclu-wa.org

Attorneys for Plaintiffs

DECLARATION OF SERVICE

I hereby declare that on this 5th day of October, 2018, I caused a copy of the foregoing to be:

☒ electronically filed with the Clerk of the Court using the Thurston County E-Filing system.

☒ e-mailed pursuant to e-Service Agreement, to the following:

Counsel for Defendants State of Washington and
Washington State Office of Public Defense:

Eric A. Mentzer, Senior Counsel
EricM@atg.wa.gov

Jeff Even, Deputy Solicitor General
JeffE@atg.wa.gov

Jennah Williams, Paralegal
JennahW@atg.wa.gov

Ali Hollenbeck, Legal Assistant
AliB@atg.wa.gov

Electronic Mailing Inbox
TorOlyEF@atg.wa.gov

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington this 5th day of October, 2018.

/s/ Alicia Cason
Alicia Cason, Practice Assistant

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000