



# Indigent Defense Program Felony Workload Coverage

Presentation by General Services Department Director, Bob Stevens | August 16, 2017

# Work Session Overview

- ✓ What is 'Indigent Defense'?
- ✓ How Does Clark County's Indigent Defense Program Work Today?
- ✓ Current Problem: Felony Case Coverage
- ✓ Facts
- ✓ Options to Move Forward to Resolve the Immediate Problem and to Stabilize the Program
- ✓ Proposed Solution and Its Impact



# What is “Indigent Defense”?

## ❖ Mandated Legal Representation

(Mandated by Constitutions and RCWs)

- Criminal and Probation Violation
  - Misdemeanors (District Court)
  - Misdemeanor Appeals (Superior Court)
  - Felonies (Superior Court)
  - Both Adults and Juveniles
- Dependency (‘Abuse & Neglect’ Cases)
- Involuntary Civil Commitment
- Guardianship & Other Civil Cases

## ❖ Non-Mandated Legal Representation

- Therapeutic Courts



# How Does Clark County's Indigent Defense Program Work Today?

- ✓ Indigent Defense Office - Administrative (2.5 FTE)
- ✓ Legal Representation Provided by 'Independent Contractors'; i.e., Not County Employees
- ✓ 58 Written Contracts with 47 Private Attorneys or Law Firms Administered by Indigent Defense Office
- ✓ Plus Four Lists of Private Attorneys Paid Hourly
  - ✓ "Homicide" & Persistent Offender ("Strike" cases) (\$90 per hour)
  - ✓ Dependency – Representing Children (\$75 per hour)
  - ✓ Guardianship (\$75 per hour)



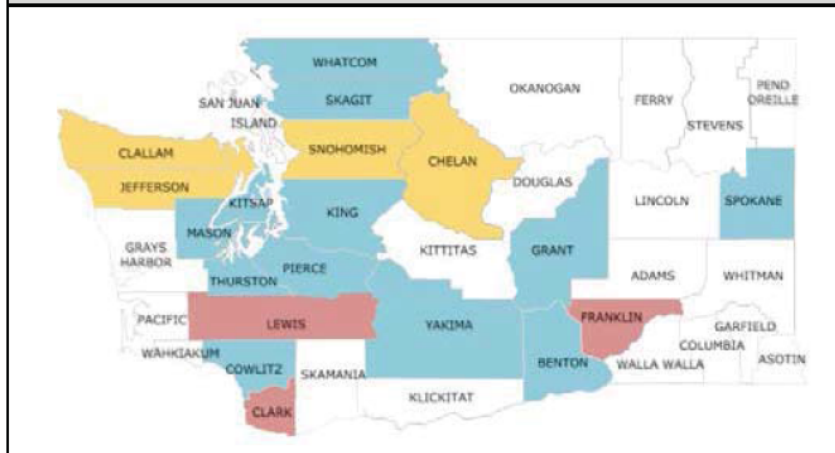
# How Do Other Counties Provide Indigent Defense Representation?

Public Defense Administration in 2005



- Public defender agencies** within county government structure
- Nonprofit agencies** organized exclusively for public defense services, contract with counties to represent indigent defendants
- Public defense coordinators** are county employees or contractors hired to provide varying degrees of oversight and accountability for public defense contracts with individual private attorneys or firms.
- Contract public defense systems**, also known as assigned counsel systems, are utilized in counties that enter into contracts with one or more private attorneys or firms to provide all indigent defense services

Public Defense Administration in 2016



# How Do Other Counties Provide Indigent Defense Representation?

<b>Type of Indigent Defense Program By County</b>			
<b>Type of Program</b>	<b>2005 # of Counties</b>	<b>2016 # of Counties</b>	<b>Net Change 2016/2005</b>
<b>Full-Time Staff ('Public Defenders') &amp; Conflict Contracts/Attorneys</b>	<b>10</b>	<b>16</b>	<b>6</b>
PD Breakout: County Employees	6	12	6
PD Breakout: Non-Profit Organization	4	4	0
<b>Indigent Defense Coordinator &amp; Contracts/Attorney Lists</b>	<b>0</b>	<b>3</b>	<b>3</b>
<b>Contracts/Attorney Lists</b>	<b>29</b>	<b>20</b>	<b>-9</b>

- Benton County Indigent Defense Coordinator/Contract Program shifts two misdemeanor contract caseloads to two FTE county staff attorneys (2009).
- Cowlitz County Contract Program shifts to a primarily employee-based system when five contractors quit their contracts the year before and no attorneys applied for contracts (2007).



# Background: Felony Contracts

- Felony Contracts: Flat fee compensation is based on felony seriousness level. Flat fee amounts have not increased since January 2009.
- Contractors are paid monthly (1/12<sup>th</sup> of annual 'base caseload'), plus 'additional compensation' for felonies that are more serious than Class C felonies.

<i>Felony Type</i>	<i>Base Fee</i>	<i>Additional Compensation</i>	<i>Total Flat Fee *</i>
Class A Sex Offense	\$800	\$1,450	\$2,250
Class B Sex Offense	\$800	\$700	\$1,500
Class C Sex Offense	\$800	\$0	\$800
Class A Non-sex Offense	\$800	\$700	\$1,500
Class B Non-sex Offense	\$800	\$200	\$1,000
Class C Non-sex Offense	\$800	\$0	\$800

\* Flat fee compensation since 1/1/2009



# Background: Felony Contracts

## Felony Contract Example

Annual Workload: 60 'points' (average 5 per month)

Annual Base Payment: \$48,000

Monthly Base Payment: \$4,000

'Additional Compensation' is determined by multiplying Class A and B cases appointed from the past month by the flat Additional Compensation fee.

Example: One Class A Sex Offense, One Class B Non-Sex Offense and Three Class C felonies appointed last month = \$1,450 + \$200 = \$1,650 'Additional Compensation.'





# Background: Felony Contracts

Contracted Workload is by 'Points' vs. Cases

Appointment to a new case (regardless of seriousness) is one 'point', with exceptions, including:

- ✓ Attorney withdraws from representation within 30 or 60 days of appointment (loss of  $\frac{3}{4}$  or  $\frac{1}{2}$  point)
- ✓ Case is a probation violation or fugitive case ( $\frac{1}{3}$  point)

## 2016 and 2017 Felony Contract Size

Smallest: 18 points per year

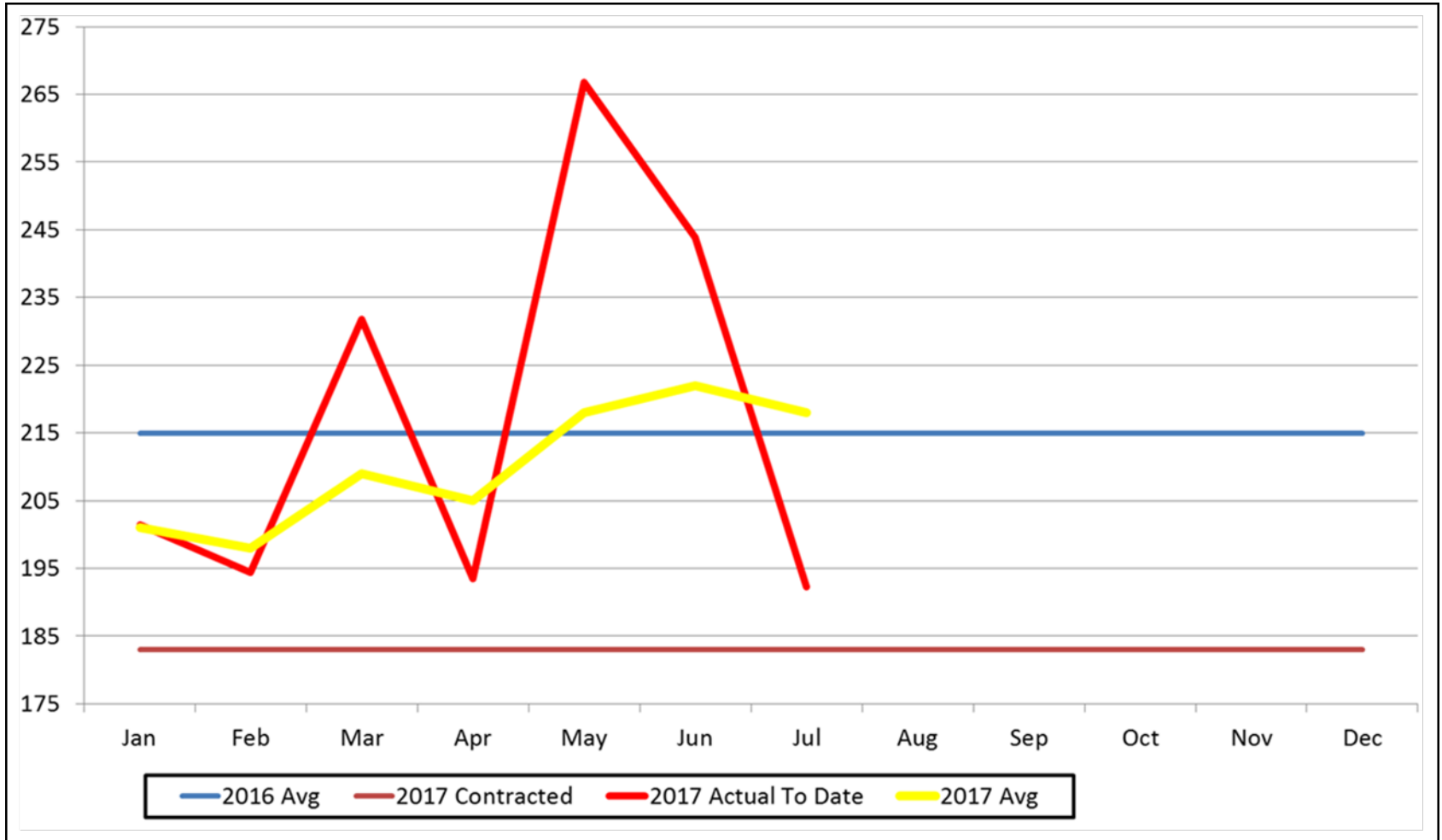
Maximum: 96 points per year for one attorney (due to private attorneys generally having additional legal practices/divisible by 12)

One law firm with five felony attorneys has a 180-point contract



# Current Problem: Felony Case Coverage

## Actual Caseload Exceeds Contracted Caseload



# Current Problem: Felony Case Coverage

- ❖ Total Number of Felony Contracts and 'Points'
  - 2016: 41 contracts 2,495 points
  - 2017: 36 contracts 2,196 points
  
- ❖ Fewer Existing Contractors and Former Contract Attorneys Applied for 2017/18 Felony Contracts
  
- ❖ Losses and Adds: 2016 Felony Contractors
  - Two contractors requested early termination of 2016 contracts (-71 points)
  - Five contractors retired from felony contracts (-286 points)
  - Some contractors requested more points, some less points
  
  - 2016 Points Lost Due to No New 2017/18 Contract: **(558)**
  - 2016 Points Added by 2016 Existing 2016 contractors: 150
  - 2017 Points Added by Awarding New Contracts 84

➤ **Net Reduction: 324 points**

(13% of 2016 Contracted Workload)



# FACTS

- ✓ Fewer attorneys/law firms applied for 2017/18 felony contracts.
- ✓ Projected felony workload is approximately 400 points per year more than currently contracted for 2017 and 2018.
- ✓ 256 annual maximum points proposed by 2016 contractors were not awarded for specific reasons.
- ✓ Since 2008, felony contractors have been under contracted by around 100 points (4%) to ensure all contractors meet their workloads.



# FACTS

- ✓ More contractors are requesting to exclude more serious felony cases (e.g., Class A & B sex offenses), some of which carry potential life sentences.
- ✓ Felony flat fee compensation is unchanged since 1/1/2009.
- ✓ An increase to adjust the rates only to adjust for inflation since 2009 (when the rates were set) is estimated to cost \$360,000 annually.
- ✓ Adding two FTE staff attorneys and reclassifying the Indigent Defense Coordinator to 0.25 direct representation is budget neutral.



# Options to Move Forward to Resolve the Immediate Problem and to Stabilize the Program

1. Amend contracts with current contractors with capacity to increase caseloads. This will be difficult and made more difficult if the increased caseloads are not carried over into 2018. If the increased caseloads are carried over into 2018, the opportunity to add two staff attorneys is lost for 2018.
2. Continue to try to find additional, qualified contract attorneys.

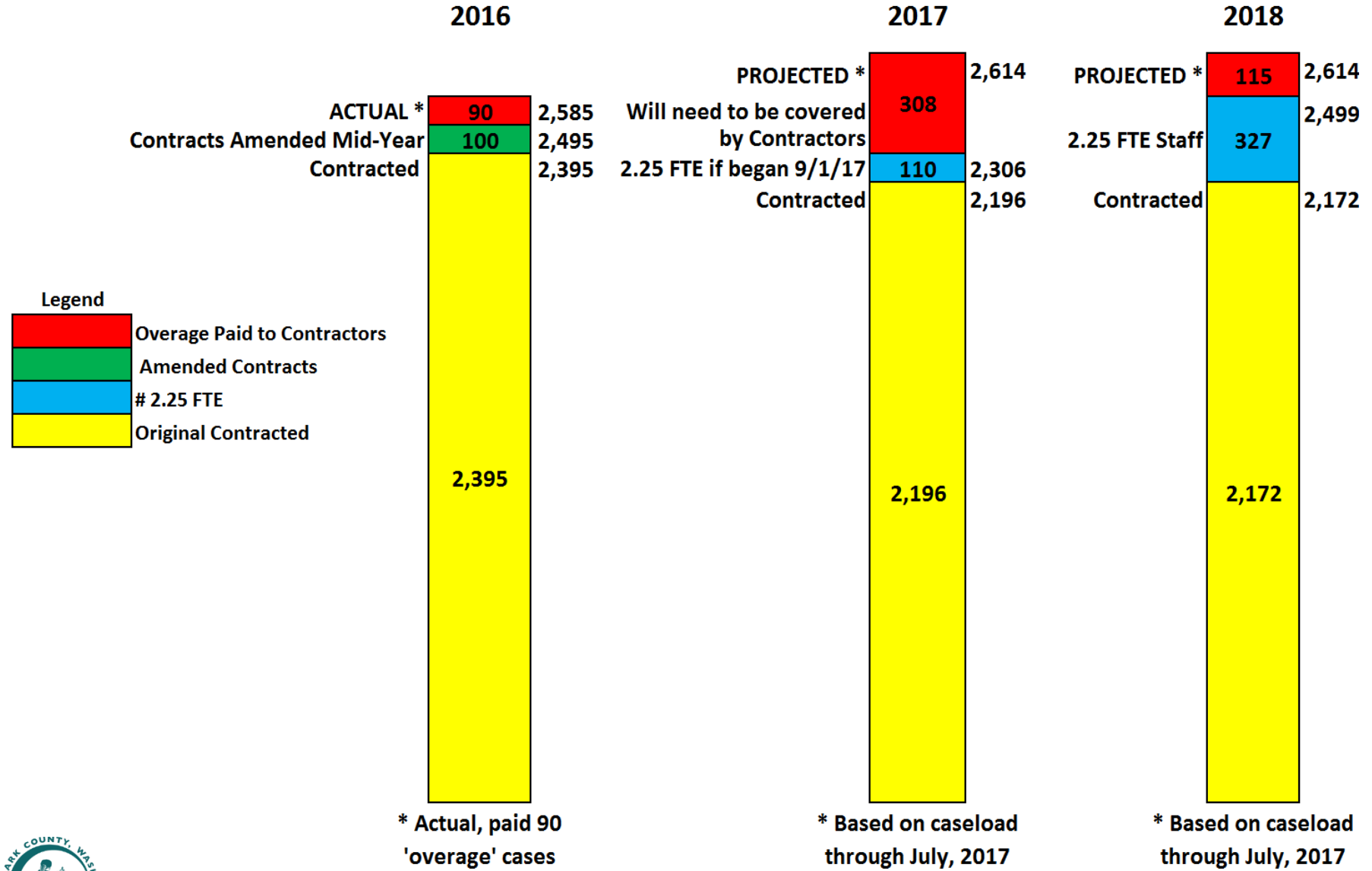


# Options to Move Forward to Resolve the Immediate Problem and to Stabilize the Program

3. Increase the rates paid for felony contracts in hopes of attracting more qualified contractors. The extent to which this will work depends on the new rates.
4. Hope felony case filings decline.
5. Cover excess cases and more serious cases with 2.25 FTE county employee attorneys to provide direct representation.



# Proposed Solution: Add County Staff Attorneys



\* Actual, paid 90 'overage' cases

\* Based on caseload through July, 2017

\* Based on caseload through July, 2017





# Impact of Proposed Solution

- ✓ 14% of felony workload would be handled by two full-time staff attorneys and 0.25 FTE of the reclassified Indigent Defense Coordinator position (estimated 327 cases annually)
- ✓ Adds stable, yet flexible, capacity to the program
- ✓ Helps protect county from decline in the number or quality of private attorneys contracting for felony representation
- ✓ Provides for financial relief in complex cases where contract attorneys cannot achieve “reasonable compensation” based on the flat fee
- ✓ Ensures coverage, specialization, and expertise for the more serious cases handled by county staff attorneys and contract attorneys



# Impact of Proposed Solution

- ✓ Provides additional resources to our attorneys through brief banks and enhanced training
- ✓ Creates efficiencies in legal representation; e.g., one FTE staff attorney is the equivalent of at least two contractors
- ✓ Improves the stability of indigent defense in Clark County
- ✓ Enhances the ability for collaborative system improvements
- ✓ Results in no adverse impact on existing contractors' points, unless there is a significant decrease in felony caseload

