

Public Defense 2008 RFP Questions from 2/13/08 Bidder's Conference

Q: How many cases were closed due to the defendant absconding? What % of the defendants who absconded come back within 12 months?

A: In 2006, 10.6% of the cases were closed with an abscond disposition. In 2007, 12% of the cases were closed with an abscond disposition. ACA estimates that most defendants who abscond come back within 12 months.

Q: How many cases were initially assigned to the Primary Defender that then went to a private attorney?

A: The table below shows the number of cases where the disposition was “private counsel retained” and the number of credits paid to the Primary Defender. The city agreed to pay a credit if the attorney had put in 2 or more hours of work before the case was transferred to a private attorney.

	2006	2007
# of cases	251 (3% of all cases)	277 (3% of all cases)
# of credits	44 credits (1% of all credits)	104 credits (2% of all credits)

Q: What does the City intend to do if the system gets more (or less) cases than estimated? There is a minimum number of attorneys noted in the RFP, but no mention of growth.

A: Ordinance 122602 guarantees a minimum number of attorneys for the Primary (15 attorneys), Secondary (7 attorneys), and Third (1 attorney) agency. If there are more cases than the estimated amount, agencies would receive additional funding since they are paid by the case. If the number of cases falls below estimated levels, the agencies are still paid for the minimum number of attorneys required by the ordinance. If cases fell significantly below that staffing (e.g. all DUI cases became felonies causing a major drop in the number of misdemeanor cases), the minimum staffing requirements could be reviewed by the Council. The Council would have to pass new legislation in order to change the minimum staffing requirements.

Q: Would this growth in cases be pro-rated between the Primary and Secondary?

A: This issue may be discussed during contract negotiations.

Q: The caseload standard is 380 assigned cases. Does the City intend to continue paying for cases when they are closed rather than assigned? How does the City define an “assigned” case?

A: The City will continue paying case credits when the case is closed. The new contracts will need to have language that distinguishes between case referrals and case assignments. For example, if a case was referred to the Primary Defender who immediately found that they had a

conflict and then referred it to the Secondary Defender, it would be considered a case referral, not a case assignment.

Q: Will there be advance payment to help an agency ‘ramp up’ to handle a higher case load?

A: No – there will not be an advance payment. Questions have come up about whether ACA received an advance payment in 2005. In their response to the 2004 RFP, ACA included in their budget proposal \$133,000 for deferred revenue to cover the costs associated with closing out cases after the contract ends. This cost was included as part of their overall proposal and cost of providing services.

Q: Are defendants screened for financial eligibility before they are referred to a defender agency?

A: Yes.

Q: How are Failure to Appear (FTA) cases handled?

A: Agencies may close a case and submit it for payment if the defendant fails to appear (FTA) for court. If the defendant appears in court within 12 months of the FTA, the agency does not get a new credit. If the defendant shows up in court after 12 months, the agency is eligible for a new credit.

Q: How many defendants who fail to appear return within the 12 months?

A: Anecdotally, most return within the 12 months.

Q: Regarding Assigned Counsel (AC), how do the private attorneys get on the list? Do they sign a contract?

A: Seattle uses a list compiled by the King County Office of Public Defense.

Q: Can an agency provide more than three references?

A: Yes, but only three will be contacted. If one is unavailable, the additional reference will be contacted.

Q: Why is “Immediate Case Assignment” is noted for the Secondary Defender but not for the Primary Defender?

A: “Immediate Case Assignment” occurs in cases that are set for a calendar staffed by a calendar attorney (e.g. arraignment) where the Primary Defender has a conflict or the Secondary Defender is already representing the defendant.

Q: The Seattle Police Department will hire more police officers in 2008. Will this mean more cases?

A: It is difficult to estimate what effect these additional officers will have on case assignments. Since 2004, 49 new police officer positions have been created – but do not appear to have had an effect on case filings. Other policy changes (like the DWLS Court ruling and subsequent state legislation) have had a much greater effect.

Q: What happens if the defendant is represented by the Secondary or Third Defender and wants to opt into Mental Health Court or Community Court?

A: If the Primary Defender had a conflict and the case went to the Secondary Defender, Third Defender or assigned counsel, the defendant is still able to opt in to MHC or CC. The Secondary (or Third) would receive a case credit, even if the case is handled in MHC or CC where there are Primary Defender calendar attorneys.

Q: What is the average “life” of an SMC case?

A: SMC does not have data on the average life of a case. The chart below shows the number of days until the case was closed in ACA’s case management system. Actual time to when the case was resolved in court is less (there is a lag between when the case resolves and when the case is closed in ACA’s case management system).

2005		
# of cases	Avg. # days	
975	57	probation violations
3,772	84	1 credit cases
2006		
# of cases	Avg. # days	
1,483	92	probation violations
4,981	110	1 credit cases
2007		
# of cases	Avg. # days	
2,032	96	probation violations
5,576	117	1 credit cases

Q: If there is a conflict, what percentage is identified at arraignment and what percentage occur later in the proceedings?

A: Currently, all cases are referred to the Primary Defender who then checks for conflicts. The financial screeners do not check for conflicts. Under the new model (where the Secondary

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Defender is handling both conflicts and regular cases), a new case assignment process (including checking for conflicts) will need to be developed.

Q: Who will handle appeals?

A: Currently the Secondary Defender handles all appeals. During contract negotiations, this may change when deciding how case assignments are made.

Q: What has been the process for appeals in which an agency identifies a conflict?

A: Currently, all appeals are handled by the Secondary Defender regardless of whether the Primary Defender has a conflict or not. If the Secondary Defender has a conflict, the appeal is referred to an assigned counsel attorney (this has happened only a couple of times).