

# Legislative Priorities

Counties are responsible for providing essential services to every resident in the State of Washington. Yet, in a time of economic prosperity and population growth, counties are faced with budget shortfalls that are leaving critical investments in criminal justice, public health, and infrastructure at risk. Enacting the Washington State Association of Counties' 2020 legislative priorities will provide needed relief to county budgets and invest in the services counties provide to all Washingtonians.

**“Given the existing low level of state funding and the increased costs identified to date, the State should increase the funding levels to cities and counties for public defense.”**

– House Judiciary Workgroup on Misdemeanor Public Defense Costs in Washington State, 2014



## Funding for Trial Court Public Defense

Access to a defense attorney in criminal matters is a fundamental constitutional right that the Legislature passed on to counties. Yet, the state funds less than 4% of the cost for these services. Counties currently spend approximately \$160 million annually with the state providing only \$6 million.

**For equal access to justice, the Legislature must fund the full cost of trial court public defense services.**



## Fish Passage Barrier Removal

Counties support legislation that will provide adequate funding to remove fish barriers for all jurisdictions across the state, including a long-term commitment to remove priority fish barriers - not just respond to the state's obligations under the culverts decision.

**The Legislature must provide funding to remove fish barriers at the state and local level as well as the necessary tools to meet the 2030 mandate.**



## Involuntary Treatment Act Court Funding

Washington State's Involuntary Treatment Act (ITA) allows the court to commit individuals to a free-standing behavioral health Evaluation and Treatment (E&T) facility or psychiatric hospital against their will for a limited time period. These involuntary civil commitments are meant to provide for the evaluation and treatment of individuals with a mental or substance use disorder who may be gravely disabled or pose a danger to themselves or others, and who refused or are unable to enter treatment on their own. Currently, counties fully fund the mandatory ITA court costs and related services. However, these costs are increasingly eating into the percentage of counties' overall non-Medicaid funding which takes away from the dollars that can be used for essential behavioral health treatment services. Counties request that the state establish a funding stream for ITA court costs that is separate and distinct from mental health treatment services and that the state create a fee schedule so that counties can have consistency in budgeting.

**Ensure Washington State provides an adequately funded ITA system.**



## Oppose New Unfunded Mandates

The Legislature has continued to shift costs through policy changes without addressing the underlying funding problems that face county budgets. Counties have been diverting funds from road maintenance, reducing investments in infrastructure, and leaving critical public safety positions unfilled to meet the obligations the state keeps piling on.

Counties believe that the legislature must comply with state law (RCW 43.135.060) that PROHIBITS the passage of any new programs or increasing services levels to existing programs unless “fully reimbursed by the state for the costs.”

**Counties oppose any legislation that will increase costs for local government without funding provided by the state.**



# Involuntary Treatment Act Court Funding

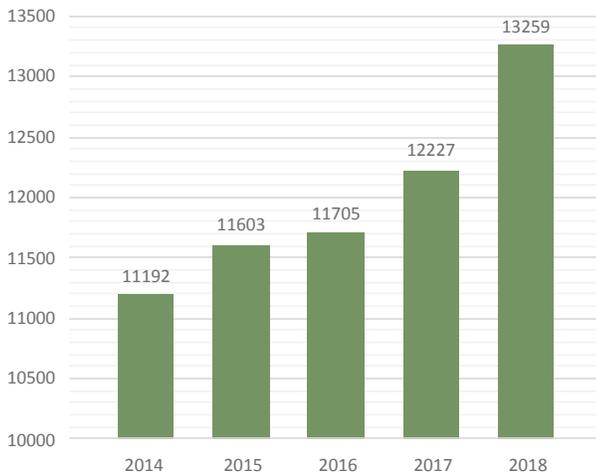


## Washington State’s Involuntary Treatment Act (ITA)

Washington State’s Involuntary Treatment Act (ITA) allows the courts to commit individuals to a free-standing behavioral health Evaluation and Treatment (E&T) facility or psychiatric hospital against their will for a limited time period. These involuntary civil commitments are meant to provide for the evaluation and treatment of individuals with a mental or substance use disorder who may be gravely disabled or pose a danger to themselves or others, and who refused or are unable to enter treatment on their own.

The result is that counties and BHASOs continue to fully fund ITA courts and related services even though ITA court costs continue to represent an increasing percentage of a county’s overall state non-Medicaid funding, thereby reducing the money available for critical behavioral health services. Further exacerbating the funding problem is the fact that there is no cap on what ITA courts are permitted to charge counties and BHASOs - costs that vary greatly across the state.

**Statewide ITA Court Cases Annually**



There is an emergent statewide need for increased non-Medicaid funding. The un-braiding of Medicaid and non-Medicaid funding as a result of the state moving to integrated managed care for behavioral health has exposed the significant shortfall in non-Medicaid funding allocated to BHASOs to fund the ever increasing ITA costs as well as all other essential behavioral health programs and services, including crisis and diversion. Additionally, this state non-Medicaid allocation has been further reduced because the state shifted 30% of these funds away from BHASOs over to the Managed Care Organizations. The end result is that ITA costs are being paid for, but to the detriment of other essential non-Medicaid behavioral health services, which counties and BHASOs have no choice but to reduce or eliminate.

In 2011, the State (via SSB 5531) created a process by which the courts either directly bill the counties for ITA court costs and related services for which the counties are then reimbursed or, by way of an Memorandum of Understanding with a Behavioral Health Administrative Service Organization (BHASO) (previously RSN and BHO), directly bill a BHASO for those costs. These costs are ultimately paid for out of the BHASO’s non-Medicaid pool of funds.

However, since 2011, the number of both ITA courts and ITA cases have significantly increased, while the amount of state non-Medicaid funds available to counties and BHASOs has greatly decreased.

### Specific focus for Counties and BHASOs this session:

- Create a separate account for ITA court costs to allow for better accounting and budgeting.
- Establish a workgroup to study JLARC recommendations from 2012 related to implementing a statewide fee schedule for ITA courts to use to establish their rates.



## ITA Cases by County by Year

	2014	2015	2016	2017	2018
Adams	2	4	0	0	0
Asotin	20	13	12	11	21
Columbia	0	0	0	0	0
Garfield	0	0	2	0	1
Benton	342	303	336	317	309
Franklin	74	50	51	67	77
Chelan	105	226	155	105	161
Clallam	58	89	150	99	134
Clark	249	173	220	190	258
Cowlitz	316	309	282	212	174
Douglas	0	0	0	0	0
Ferry	0	0	0	0	0
Pend Oreille	0	0	0	0	0
Stevens	1	0	2	68	245
Grant	0	0	2	1	4
Grays Harbor	1	0	0	2	4
Island	46	9	5	0	4
Jefferson	24	15	13	4	2
King	3,852	4,004	4,152	4,694	4,559
Kitsap	302	269	241	197	259
Kittitas	2	0	0	0	0
Klickitat	0	1	2	0	1
Skamania	0	0	0	1	0
Lewis	28	2	3	8	330
Lincoln	0	0	0	1	1
Mason	0	1	0	0	2
Okanogan	68	43	41	1	0
Pacific	2	0	3	2	2
Wahkiakum	0	0	0	0	0
Pierce	1,207	1,642	1,357	1,486	1,416
San Juan	1	1	0	0	0
Skagit	187	306	504	473	529
Snohomish	815	1,025	1,165	1,285	1,596
Spokane	1,721	1,456	1,381	1,456	1,531
Thurston	457	343	444	440	553
Walla Walla	11	2	2	3	2
Whatcom	431	316	263	245	226
Whitman	3	3	4	3	9
Yakima	867	998	913	856	849
<b>Statewide Total:</b>	<b>11192</b>	<b>11603</b>	<b>11705</b>	<b>12227</b>	<b>13259</b>



2020 LEGISLATIVE SESSION

# Increased Funding for Trial Court Public Defense



## Justice by Geography

The constitution ensures a defendant’s right to counsel in misdemeanor and felony prosecutions. The state’s financial contribution to the constitutional right for effective legal representation can only be described as wholly inadequate. Despite the Legislature’s continued recognition of the state’s obligation that “effective legal representation must be provided for indigent persons...consistent with the constitutional requirements of fairness, equal protection, and due process,” our state has failed to make progress toward funding this obligation. See RCW 10.101.005.

It is crucial for the Legislature to understand that the absence of state revenue, for such an obvious state mandate delegated to counties, leaves counties with no other option than to cut from other public health and safety services provided to our shared communities. **Please support state funding for trial court public defense services.**

**“Given the existing low level of state funding and the increased costs identified to date, the State should increase the funding levels to cities and counties for public defense.”**  
– House Judiciary Workgroup on Misdemeanor Public Defense Costs in Washington State, 2014

**4%**  
Washington State’s contribution of the total amount spent for trial court public defense services

Trial court public defense services suffer from the effects of justice by geography just as education did prior to McCleary. Having varying degrees of funding and resources for these services is inequitable.

**\$54M**  
Increase in counties’ costs for providing trial court public defense services from 2008-2017 (50%)

**Counties desperately need the state to back up its stated commitment** for the constitutional right to effective legal representation with real money. Counties cannot continue to fund trial court public defense services alone. In order to continue effective access to justice, the Legislature must fund the full cost of trial court public defense services – **an additional \$320 million in the next biennium.**

### Current Funding Structure:

- Washington counties pay over 96% of the cost of trial court public defense services (\$160M /year)
- The state pays less than 4% (\$6M /year)
- This is an unbalanced approach to funding our justice system
- Washington State is the one of the lowest contributors nationally to public defense

### Growing Requirements of Counties:

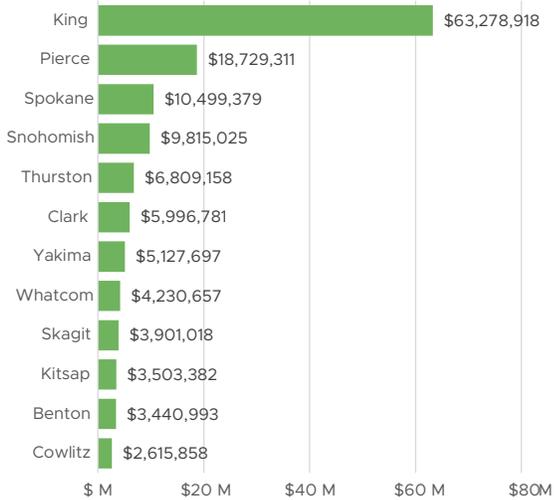
- The legislature and the Supreme Court have required counties to adopt new caseload standards for public defenders
- Counties have worked hard to take incremental steps to reach staffing levels consistent with the new standards, but costs have skyrocketed
- Nationally there are 23 states that fully fund public defense and another 9 states that fund more than 50%

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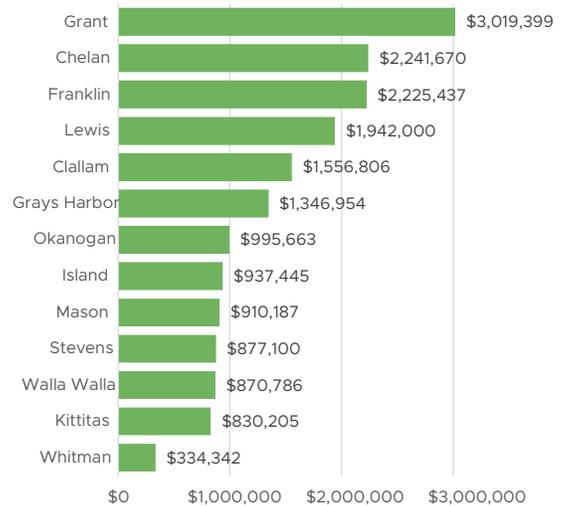


# County Public Defense Spending (2018)

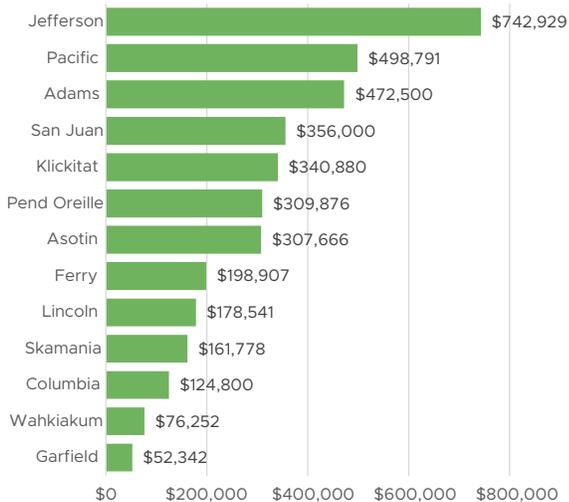
## Public Defense Spending County Pop. > 100,000



## Public Defense Spending County Pop. 40,000 to 100,000



## Public Defense Spending County Pop. < 40,000





## Fish-Barriers: A Comprehensive Approach

In 2001, twenty-one Washington State Tribes filed suit in Federal District Court seeking to compel the State of Washington to repair or replace culverts that acted as barriers to fish migration.

Dissatisfied with the state’s progress, the tribes sought and won a permanent injunction in 2013 that was upheld by the U.S. Supreme Court in 2018, forcing the state to replace all offending culverts under state-owned roads in the case-area by 2030.

This case area includes an estimated 800 state-owned barriers within fourteen counties surrounding Puget Sound. The state has estimated costs in excess of \$2 billion to address the 800+ barriers under state roads.

The Washington Department of Fish and Wildlife’s (WDFW) inventory lists over 3,200 known county-owned fish barriers in the case area, with an estimated potential for 10,000 county owned barriers statewide. The cost to replace county-owned barriers in the 14-county case area is currently estimated at \$7.7 billion.

**No counties possess resources to address a problem of this magnitude. On average, counties can afford to upgrade 2-4 barriers per year.**



**Counties support a coordinated approach to fish passage barrier removal.**

**Now is the time to develop a coordinated program that removes state, local, and private barriers that completely open habitat throughout a watershed.**

**1:7**

“For every WSDOT barrier, on average, there are two other (non-WSDOT barriers) downstream and five upstream.” July 2012 WDFW study

**\$7.7B**

The cost to replace the **3,200** county-owned barriers in the fourteen-county case area is currently estimated at \$7.7 billion.

**3,200**

3,200 county-owned barriers in the fourteen-county case area which will need to be made passable.

### What Counties Need:

- Adequate funding and a long-term commitment from the state to remove county-owned fish barriers;
- A reduction of elimination of project match requirements;
- Funding for the monitoring & maintenance of passable culverts, continued efforts to identify & inventory new barriers;
- Streamlining project permitting; and
- Tools that assist in speeding up project delivery.





2020 LEGISLATIVE SESSION

# Unfunded Mandates



## What is an ‘Unfunded Mandate’?

Counties play an essential role in keeping Washington residents safe and secure by preserving public health and well-being, protecting public safety, and safeguarding the civil and criminal justice system.

Washington’s counties are committed to working with the Legislature to find a way to serve all the residents of the state.

County revenues are simply not keeping pace with the cost of normal inflation and population growth. In comparison with cities and the state, county revenue growth lags significantly behind.

### UNFUNDED MANDATE

#### WSAC’s Definition:

A true unfunded mandate is any instance where the Legislature, the courts or other agencies take action that increases the costs of running county government without compensation for the new legal requirements.

### UNFUNDED MANDATE REFORM

*RCW 43.135.060*

In 1993, the citizens of Washington State passed Initiative 601 that, in addition to establishing state spending limits, created a requirement that local governments must be reimbursed by the state for the costs of any new programs or increased services imposed on them.

The state continues to pass legislation that increases costs for counties, refuses to adequately fund the constitutionally and statutorily required county services, and allows state agencies to adopt costly regulations, or avoid paying their fair share.

Counties, as agents of Washington state, are tasked with implementing laws and court mandates on behalf of the state of Washington. Therefore, the Legislature must ensure that counties have adequate resources to perform these constitutional and statutory responsibilities.

#### Examples of unfunded mandates from the Legislature are:

- Trial Court Public Defense
- Election Costs
- Building and Servicing Ballot Drop Boxes
- Court Costs
- Public Health Services
- Public Safety Regulations

The Washington State Legislature has continued to shift costs through policy changes without addressing the underlying funding problems that face county budgets. However, it is not only the Legislature that shifts costs down to counties. Other state agencies and the courts changing rules, regulations and internal policies affect county budget’s bottom line.

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