

State of Washington
Joint Legislative Audit & Review Committee (JLARC)



**Involuntary Treatment Judicial Costs:
Actual Cost Data Not Available;
Estimates Suggest Wide Range in
Average Case Costs**

Report 12-5

July 18, 2012

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alternative formats for persons with disabilities.*

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The statutory authority for JLARC, established in Chapter 44.28 RCW, requires the Legislative Auditor to ensure that JLARC studies are conducted in accordance with Generally Accepted Government Auditing Standards, as applicable to the scope of the audit. This study was conducted in accordance with those applicable standards. Those standards require auditors to plan and perform audits to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. The evidence obtained for this JLARC report provides a reasonable basis for the enclosed findings and conclusions, and any exceptions to the application of audit standards have been explicitly disclosed in the body of this report.

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Committee Approval

On July 18, 2012, this report was approved for distribution by the Joint Legislative Audit and Review Committee.

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Involuntary Treatment Act (ITA) Allows Involuntary Civil Commitments

The state Involuntary Treatment Act (ITA) is designed to:

- Prevent inappropriate involuntary commitments of mentally disordered persons;
- Protect clients' rights while providing treatment in a timely manner and in a community-based setting when appropriate; and
- Protect the public safety.

Under this Act, individuals are entitled to a court hearing to determine if a commitment should occur. These hearings are held in county Superior Courts, most frequently in one of the 13 Washington counties that have psychiatric evaluation and treatment (E&T) facilities. The individual may or may not be a resident of the county in which the hearing is held. These counties incur judicial expenses each time they handle an ITA commitment case.

Legislature Creates Reimbursement Process

Legislation in 2011 (Substitute Senate Bill 5531) created a process in which counties can be reimbursed for their actual judicial costs associated with the county-prosecuted ITA cases. Counties can bill their Regional Support Network (RSN). RSNs are responsible for the delivery of mental health services within designated geographic areas. The reimbursement process becomes available July 1, 2012.

The same legislation directed JLARC to:

1. Assess the actual direct costs of providing judicial services for involuntary civil commitments in each county;
2. Review and analyze the reasons for differences in costs among counties; and
3. Identify issues and methods for updating the costs to reflect changes over time.

JLARC Provides Initial Estimates to Start Reimbursements, But Case Cost Data Needs Improvements

Twelve of the 13 counties do not have processes in place to capture the actual ITA expenditure data necessary to calculate average case costs. JLARC used the best possible cost and case number information available to estimate average case costs for each county.

Based on county estimates, the average case costs range from \$282 in Skagit County to \$1,124 in Pierce County.

Case Costs Vary Among Counties Due to a Variety of Factors

Average ITA case costs vary among the counties due to personnel-

related factors and to other judicial services some counties provide. Personnel-related differences include differences in salaries and benefits paid to the county participants in ITA cases (judge or commissioner, public defender, county prosecutor, and county clerk), differences in the number of cases each of these participants handles, and differences in the amount of time each participant spends on ITA cases. Factors that influence the total amount of time spent include the number of times the person appears in court, the mix of different types of ITA hearings that each county handles, and the number of contested cases.

The provision of other judicial services also resulted in variations among the county ITA costs. Some but not all of the counties reported expenditures for other services such as transportation, security, witnesses, and interpreters. These other judicial service expenditures differed due to:

- Different approaches or needs counties have in conducting cases;
- Whether a county reported a cost it has; and
- Whether the county or another entity such as an E&T or RSN paid the cost.

To Comply with Statute, Counties and State Agencies Need to Track and Audit ITA information

From our efforts to gather actual expenditures and ITA case count information and to analyze the estimates provided by the counties, we have two recommendations. We have issued these recommendations so that counties can be accurately reimbursed by RSNs in accordance with statute, and rates can be appropriately updated to reflect changes over time.

Recommendations

Recommendation 1 – By January 1, 2013, the Department of Social and Health Services should report to the appropriate committees of the House and Senate a plan and timeline for implementing the ITA judicial cost reimbursement process under RCW 71.05.730. The report should include what should be done to:

- Determine allowable ITA judicial costs for inclusion in reimbursement rates;
- Establish contract provisions with RSNs that limit ITA judicial cost reimbursements to counties for their actual ITA judicial costs;
- Assure that actual cost data is collected, and reviewed or audited;
- Implement a method for updating rates; and
- Ensure that Maintenance of Effort as required in RCW 71.24.160 is met.

If applicable, DSHS should identify any resource needs, and may wish to comment on any alternate approaches to reimbursing counties for ITA judicial costs.

Recommendation 2 – The Administrative Office of the Courts should, consistent with RCW 2.56.030, take steps to ensure county Superior Courts and County Clerk's Offices are consistently applying the definition of an ITA case contained in RCW 71.05.730.

Pursuing Alternative Methods for Establishing and Updating ITA Reimbursement Rates Would Require Statutory Changes

Complying with statute will require counties and state agencies to take on new tasks to track and confirm actual judicial costs. JLARC has identified some alternative approaches currently used by other programs within the state to establish and update reimbursement rates that may be less resource-intensive to implement than the requirements in current law. However, adoption of any of these alternatives would require a change in statute. The alternatives are described in Appendices 3 and 4.

PART ONE – INVOLUNTARY CIVIL COMMITMENTS

The Involuntary Civil Commitment Process Includes Hearings in County Superior Courts

The civil commitment process under Washington’s Involuntary Treatment Act (ITA) has many steps involving a variety of people at the county level. Exhibit 1 on the following page describes those steps.

The civil commitment process includes hearings in county Superior Courts. This JLARC study focuses on the judicial costs counties incur when the person who is the subject of the involuntary commitment process has an ITA hearing in county court. County Superior Courts hold approximately 9,000 ITA commitment hearings each year. The majority of these hearings (98 percent) take place in the 13 counties that have mental health evaluation and treatment centers. Exhibit 2 on page 5 shows these 13 counties and the evaluation and treatment centers within them.

Pierce and Spokane Counties are home to Washington’s two state psychiatric hospitals. Some county staff are involved with the commitments of individuals in these hospitals, and both counties consider state-prosecuted cases as part of the counties’ caseloads. However, the mandate under which JLARC conducted this study was focused solely on the county-prosecuted cases. JLARC separated the costs of these cases to the extent possible, and this report examines average case costs for county-prosecuted cases only.

Counties Provide Judicial Services Related to Involuntary Commitments

Each of the counties that holds ITA hearings generally has:

- A judge or commissioner who hears the case;
- A public defender who represents the person who is the subject of the hearing. The public defender may be a county employee or a private attorney providing services through a contract with the county;
- A county prosecuting attorney who represents the treatment facility that seeks to hold the individual; and
- Staff from the county clerk’s office to handle the filing of petitions and record the proceedings.

The counties may also provide other judicial services such as expert witnesses and security.

Based on estimates supplied by the 13 counties that handle nearly all of the ITA commitment cases, total expenditures have averaged \$6.8 million per year for ITA judicial services over the past three years. Some counties have made independent arrangements with regional support networks (RSNs) for the reimbursement of all or part of their judicial costs, while others have not.

Exhibit 1 – The State’s Involuntary Civil Commitment Process Includes Hearings in County Superior Courts



An episode or concern triggers a request for an evaluation by a Designated Mental Health Professional (DMHP).

A variety of events may trigger this investigation, for example, a person’s behavior in an emergency room or a request by concerned family members. The person is evaluated by the DMHP in the county where the triggering event occurred. This may or may not be the person’s county of residence.



The county DMHP evaluates the person’s mental health to determine if the person poses a danger to himself or to the community.

The DMHP interviews the person and may also interview witnesses or other interested parties and review the person’s medical records.



If the county DMHP determines that the person needs further evaluation or treatment, the DMHP locates an available bed for the person in an evaluation and treatment facility (E&T).

There are E&Ts in 13 counties in Washington. The person may or may not be a resident of the county where the DMHP locates an E&T with an available bed.



The person may be involuntarily held for treatment at the E&T for up to 72 hours.

While at the facility, E&T staff evaluates the person’s mental health. If the evaluation concludes that the person needs to be held at the facility for additional inpatient treatment, the E&T petitions the county Superior Court to do so.



In the county where the E&T is located, a hearing is held in county Superior Court to determine if the person should be held at the E&T for additional treatment.

As with the earlier step, this may or may not be the county where the person resides. The first court hearing usually considers an additional treatment period of 14 days. The court may find in favor of the E&T’s petition, release the person, or choose a less restrictive treatment option.



If the county court finds in favor of the E&T’s petition, the person returns to that E&T for additional inpatient treatment.

During this stay (usually 14 days), E&T staff reevaluates the person’s mental health and determines whether the person needs to be held at the facility for a longer period of inpatient treatment. If this is the staff’s decision, the E&T again petitions the county Superior Court.

JLARC’s study focuses on the judicial costs of these two steps in the civil commitment process



In the county where the E&T is located, another county Superior Court hearing determines if the person should be held at an E&T for additional inpatient treatment.

An E&T may petition for an additional period of inpatient treatment up to 90 days. As with the initial court hearing, the court may find in favor of the E&T’s petition, release the person, or choose a less restrictive treatment option.



Before the 90-day order is complete, a petition may be filed for the person to be committed for 180 days of inpatient treatment or for a less restrictive alternative.

The steps can be repeated with the person either being sent to one of the state psychiatric hospitals for 180-day commitments or having 180-day less restrictive orders, but these hearings are not part of this study and are intentionally excluded in JLARC’s analysis.

Source: JLARC analysis of Chapter 71.05 RCW.

Exhibit 2 – 98% of the ITA Hearings Are Held in the Counties That Have Mental Health Evaluation and Treatment Centers



Source: AOC and DSHS.

2011 Legislation Provides for Reimbursement of County ITA Judicial Costs

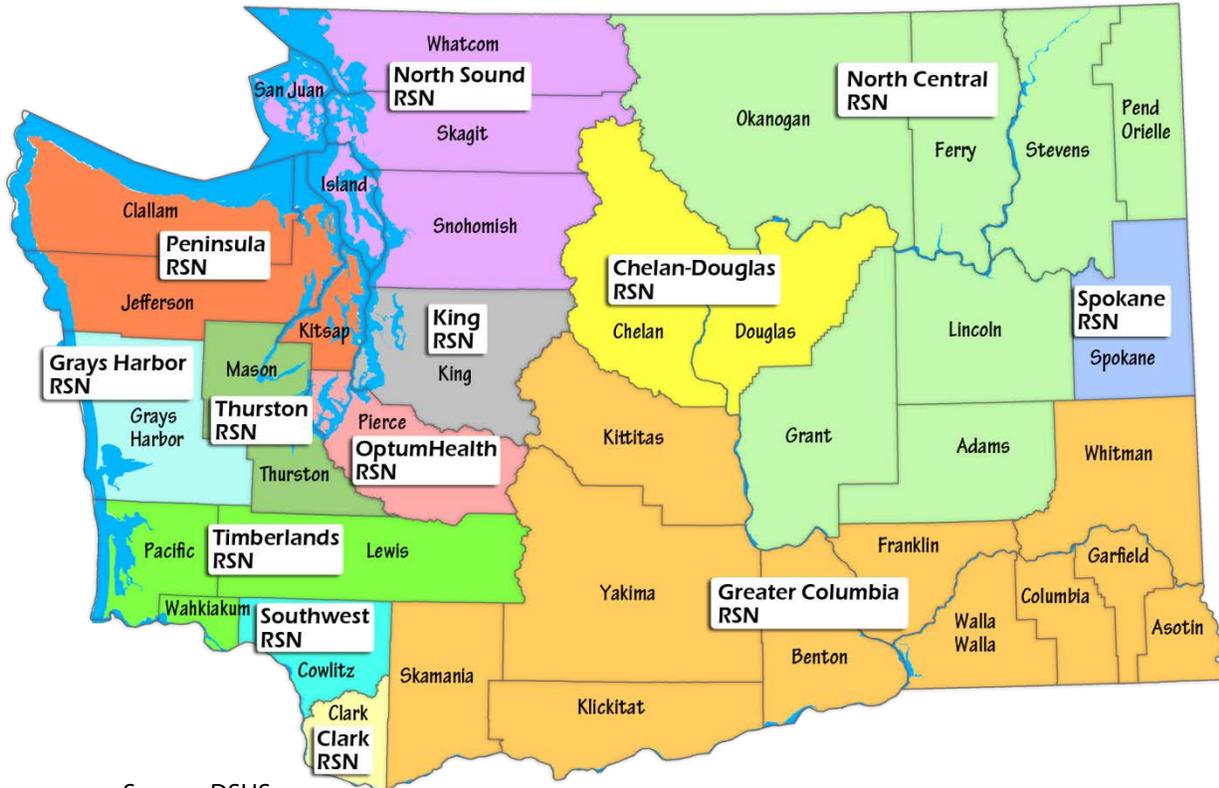
Substitute Senate Bill 5531 (2011) establishes a process for Regional Support Networks (RSNs) to reimburse counties for ITA judicial costs. Through contracts with the state Department of Social and Health Services (DSHS), RSNs oversee the delivery of mental health services for adults and children who suffer from mental illness or severe emotional disturbance. RSNs operate in a designated geographic area and subcontract with mental health service providers in their areas. There are currently 13 RSNs in Washington (see Exhibit 3 on following page).

Billing Process (effective July 2012)

- Counties can bill their own local RSNs for county-prosecuted cases quarterly on a per case basis.
- If a county submits a bill for someone who lives outside of the RSN where the hearing occurred, the RSN billed by the county can, in turn, bill the RSN that includes the individual’s county of residence.
- Counties are not required to bill for reimbursement using the process created in the bill.

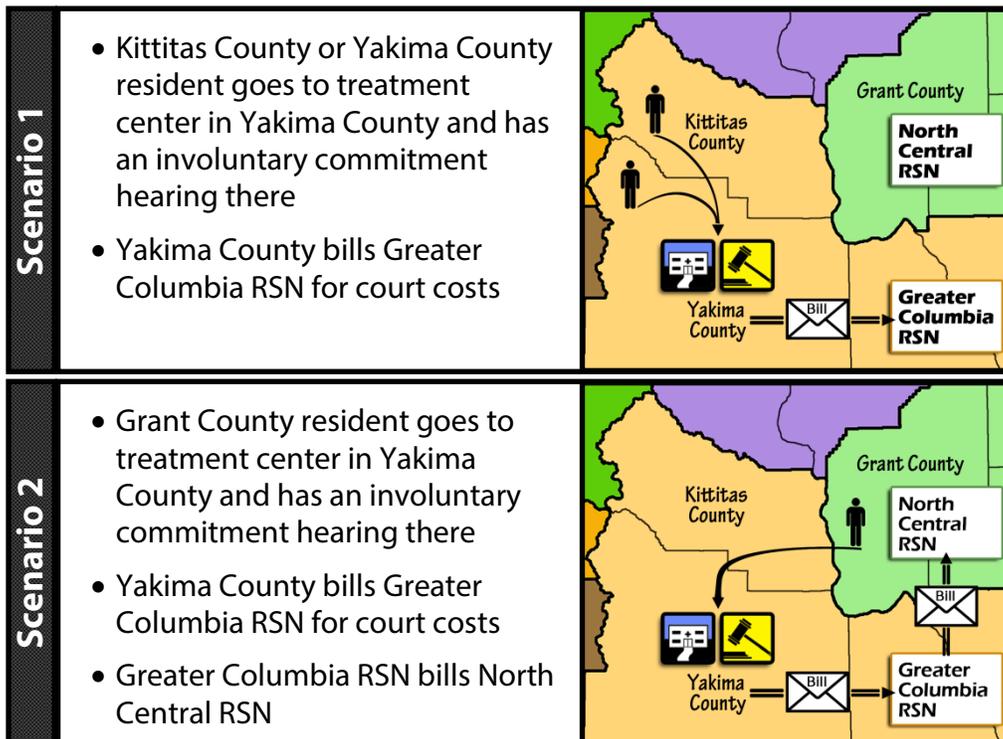
Exhibit 4 illustrates this new reimbursement process. Some RSNs have already been reimbursing their own counties for all or part of their ITA judicial costs. However, the 2011 legislation provides an RSN the ability to bill other RSNs for cases involving individuals who reside in the other RSNs.

Exhibit 3 – Under the New Reimbursement Process, the State’s 13 Regional Support Networks Will Reimburse Counties and Each Other for ITA Judicial Costs



Source: DSHS.

Exhibit 4 – How the Reimbursement Process Works



Source: JLARC analysis RCW 71.05.730.

Rates

- Reimbursement rates for judicial costs for counties with 20 or more involuntary civil commitment cases per year are to be based on the counties' actual costs averaged across three years.
- Counties that typically handle fewer than 20 cases per year are to receive 80 percent of the median county's rate.
- The reimbursement rates become effective July 2012.

Sources of Reimbursement Funds

- Through contractual agreements, DSHS provides funding to each RSN. The funds include federal Medicaid dollars and state monies. Other funding for RSNs comes from federal grants and local revenues such as property taxes.
- RSNs can reimburse counties for ITA judicial costs with non-Medicaid state monies only.

Use of Reimbursement Funds

- The counties may, but are not required to, use their reimbursement payments for their judicial costs.
- There is one constraint on the counties' use of their reimbursement funds. Counties are already required by statute to fund mental health services for minors at a level established in 1984, adjusted for inflation. This is called a "maintenance of effort" (MOE) commitment. Some counties may have included expenditures for ITA judicial costs as part of their MOE commitment. If this is the case, the 2011 legislation requires that the share of monies reimbursed to a county under the new process equal to the amount of ITA judicial costs that are already part of its MOE commitment must be used to further treatment of mental health and chemical dependency disorders. In other words, this portion of any ITA reimbursement cannot offset judicial costs.

DSHS, RSN, and County Interactions on Mental Health Services

One way to effect change in Washington's mental health system is through existing arrangements between the state Department of Social and Health Services (DSHS), the Regional Support Networks (RSNs), and counties. We provide this background information here because one of our study recommendations may require DSHS to use its rule-making or contracting authority to improve counties' data collection and reporting.

The Legislature has given DSHS the authority to adopt rules to implement Chapter 71.05 RCW, the chapter of law on mental illness. The Legislature inserted the provision creating the new ITA judicial cost reimbursement process into this chapter, so DSHS has the authority to adopt implementing rules related to this new process.

DSHS contracts with RSNs and provides state and federal mental health funding. DSHS has the authority to monitor and audit the RSNs to assure compliance with the contract provisions, including requiring RSNs to provide data. Through these contracts, RSNs assume responsibility for the delivery of mental health services and, in turn, have agreements with the counties in their designated geographic areas.

Conclusions

DSHS, RSNs, and counties will be implementing the reimbursement process as defined in SSB 5531 effective July 1, 2012.

Part Two provides an estimate of what counties have spent on ITA commitment cases over the past three years and the rates they may use to bill RSNs.

PART TWO – VARIATION IN COUNTY ITA JUDICIAL COSTS

JLARC Assessed County ITA Judicial Costs

The Legislature directed JLARC to assess the actual direct costs of providing ITA judicial services for involuntary civil commitments for those counties with more than 20 civil commitment cases conducted in the year prior to the study. This meant assessing these costs for the 13 counties previously identified so that the rates resulting from the assessment could be in place before the July 1, 2012, effective date of the new reimbursement process. The Legislature also asked JLARC to analyze the reasons for differences in costs among the counties. This part of the report provides:

- Estimates of direct ITA judicial costs for 12 of the 13 counties and actual direct costs for one of the counties;
- An estimate of the average cost per case for all 13 counties; and
- Identification of a number of factors that contribute to differences in ITA judicial costs among the counties.

JLARC Suggests Caution Regarding Reported County ITA Average Case Costs

The new reimbursement process is on a cost per case basis. The 2011 legislation assumes the availability of 1) actual ITA expenditure information, and 2) accurate ITA case counts. In the course of conducting this study, JLARC learned that:

- Twelve of the 13 counties with 20 or more ITA cases per year do not have processes in place to capture the ITA expenditure data necessary to calculate county average case costs using actual costs, as this information had not been required prior to the passage of SSB 5531. King County is the only county that could provide the necessary actual cost data. Pierce and Spokane Counties have systems that capture ITA judicial expenditures, but the two counties do not isolate the county costs for state-prosecuted cases at Western and Eastern State Psychiatric Hospitals from their costs for county-prosecuted ITA cases. The new reimbursement process only applies to the county-prosecuted cases. The remaining ten counties had varying levels of expenditure data associated with their ITA judicial costs. Pierce, Spokane, and the other ten counties provided *estimates* of their ITA judicial costs for this study, rather than actual expenditure information;
- No detailed guidance is available for counties on exactly which expenses qualify as “reasonable,” allowable ITA judicial costs;
- No system is in place to specifically audit or review the county figures; and
- Counties report each year to the Administrative Office of the Courts (AOC) on their ITA case counts; in fact, with the exception of Pierce County which has its own Superior Court database (LINX), these are the case counts JLARC uses in this study. However, AOC staff report that they do not verify the data submitted by the counties. AOC does not seek out anomalies, actively investigate questionable entries, or correct what might be bad data.

AOC reports that each county determines how it will count its cases. A county's approach to its case count may or may not align with the definition of a "case" in the 2011 legislation.

This report concludes with recommendations intended to address these shortcomings in the future. In the meantime, the county judicial ITA costs per case presented here are estimates and are based on the best information currently available.

Extensive Effort by JLARC to Collect Cost and Case Information

JLARC needed to determine the total amount spent by each of the 13 counties to provide ITA judicial services and the number of ITA cases each county handled to calculate average case costs for each county. JLARC's extensive efforts to collect information included:

- **A survey on three years of ITA judicial costs** – The JLARC survey asked counties for specific cost and case number information for 2009, 2010, and 2011.
- **Questionnaires** – The JLARC questionnaires were sent to each county's public defender, prosecuting attorney, county clerk, Superior Court, budget and finance offices in all 13 counties, as well as to all 13 RSNs. The questionnaires asked: if expenditures are tracked; the level of expenditure detail; processes for handling ITA cases and who is involved; time spent on ITA cases; and arrangements for billing for or reimbursing ITA judicial costs.
- **A time and effort survey** – JLARC asked staff in each county's public defender, prosecuting attorney, and county clerk offices to estimate the amount of time they spend on the various steps in the process and for different types of hearings. The survey also gathered information on the percentage of contested hearings.
- **Site visits** – JLARC staff conducted site visits at each of the 13 counties to discuss judicial processes and costs and observed ITA court hearings first-hand in ten of those counties, and talked with RSN staff.
- **Review of ITA case count information that counties submit to other entities** – JLARC reviewed ITA case numbers that counties currently submit to the Administrative Office of the Courts (AOC) and to RSNs. The AOC data supplied information on each county's mix of different kinds of ITA hearings.
- **Other efforts to verify county expenditure data** – JLARC asked the counties for documentation to verify the expenditure data they had provided. Many of the counties were unable to provide such documentation, or what they did provide generally lacked detail.

Using this array of approaches, JLARC attempted to identify whether information collected using one tool would corroborate the information collected using other tools. However, JLARC found gaps and inconsistencies in the cost and case information the counties provided across multiple tools. The aforementioned shortcomings likely contributed to these gaps and inconsistencies.

Best Available ITA Judicial Average Case Costs by County

Exhibit 5 below presents the best information JLARC could obtain on the average ITA judicial costs per case for the 13 counties that have evaluation and treatment centers and 20 or more ITA cases per year. These counties handle nearly all of the ITA commitment cases each year. A county that has fewer than 20 ITA cases per year may seek reimbursement from its RSN at 80 percent of the rate for the median county.

Exhibit 5 – Estimated Average Cost per ITA Case by County

County	Average Case Cost	3-Year Average Annual Expenditure	3-Year Average Annual Case Count
Pierce*	\$1,124	\$538,726	479
King	\$1,038	\$3,115,220	3,001
Clark	\$624	\$122,774	197
Cowlitz	\$614	\$104,392	170
Thurston	\$561	\$150,978	269
Yakima	\$450	\$308,637	686
Spokane*	\$447	\$443,293	991
Franklin	\$417	\$25,454	61
Snohomish	\$361	\$283,893	787
Whatcom	\$346	\$118,418	342
Kitsap	\$325	\$89,267	275
Benton	\$349	\$105,721	303
Skagit	\$282	\$141,128	501
State Average	\$870	\$7,016,417	8,062
Other Counties	\$358	Counties with fewer than 20 cases per year receive 80% of the median county (Spokane is the median county).	

Source: JLARC analysis of county-reported expenditures and AOC case counts (case counts for Pierce County are from its Superior Court database – LINX).

*County expenditures are not included for state-prosecuted 180-day commitment cases for the two state psychiatric hospitals.

Impact of New Reimbursement System on RSNs and Counties

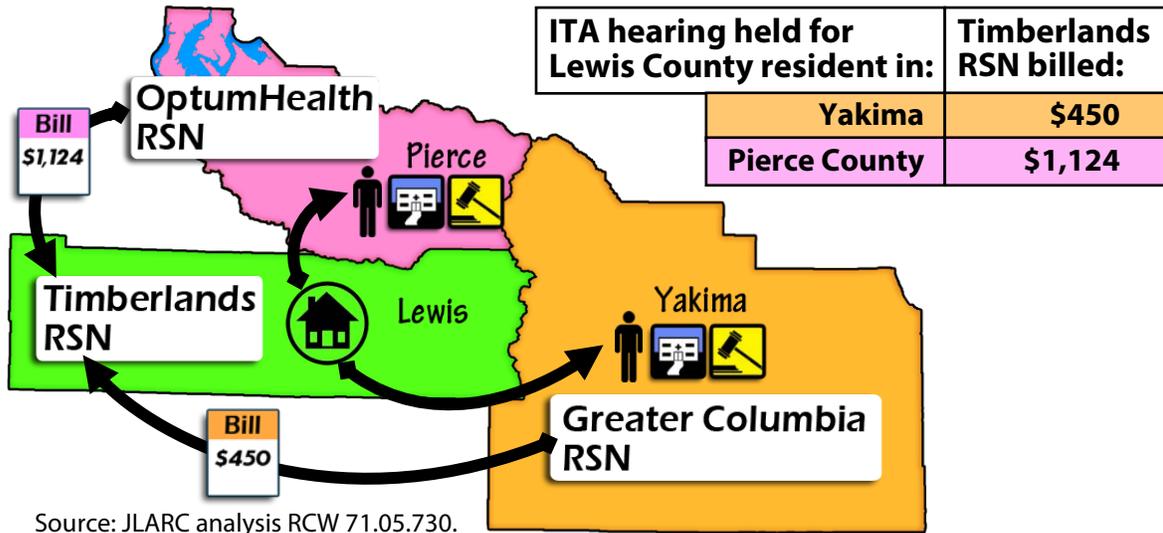
In FY 2011, RSNs reported expenditures of nearly \$5.8 million for ITA judicial costs. Most of this was paid directly to counties to reimburse them for their ITA judicial costs. Payments King County RSN made to King County accounted for more than half of all judicial costs paid by RSNs in the state in 2011. The ITA judicial costs represented about 5 percent of the total non-Medicaid state dollars spent by RSNs.

The reader should note that the reimbursement system and the estimated case rates will likely shift funds across RSNs and counties effective July 2012. Shifts will occur because: 1) RSNs that did not report making any ITA judicial payments in 2011 will be making payments to counties and other

RSNS; and 2) RSNs will pay different amounts because they will use three-year average rates; and as RSNs reimburse each other, net payments paid by RSNs will change.

Exhibit 6, below, illustrates how RSN reimbursements may differ depending upon the county where an individual is sent for a 72 hour detention and a subsequent commitment hearing might occur.

Exhibit 6 – Reimbursement Amounts May Differ



Because of these differences, we attempted to analyze the possible flow of payments between RSNs by seeking information from DSHS about individuals’ counties of residence and where their ITA hearings take place. DSHS was unable to provide the necessary data.

ITA Case Costs Vary Among Counties Due to a Variety of Factors

The Legislature directed JLARC to analyze the reasons for differences in the county ITA costs per case. This discussion of the differences is divided into two parts: one on differences in personnel-related factors, and one on differences in the provision of other judicial services.

Personnel-Related Factors Contribute to Differences in County Average Case Costs

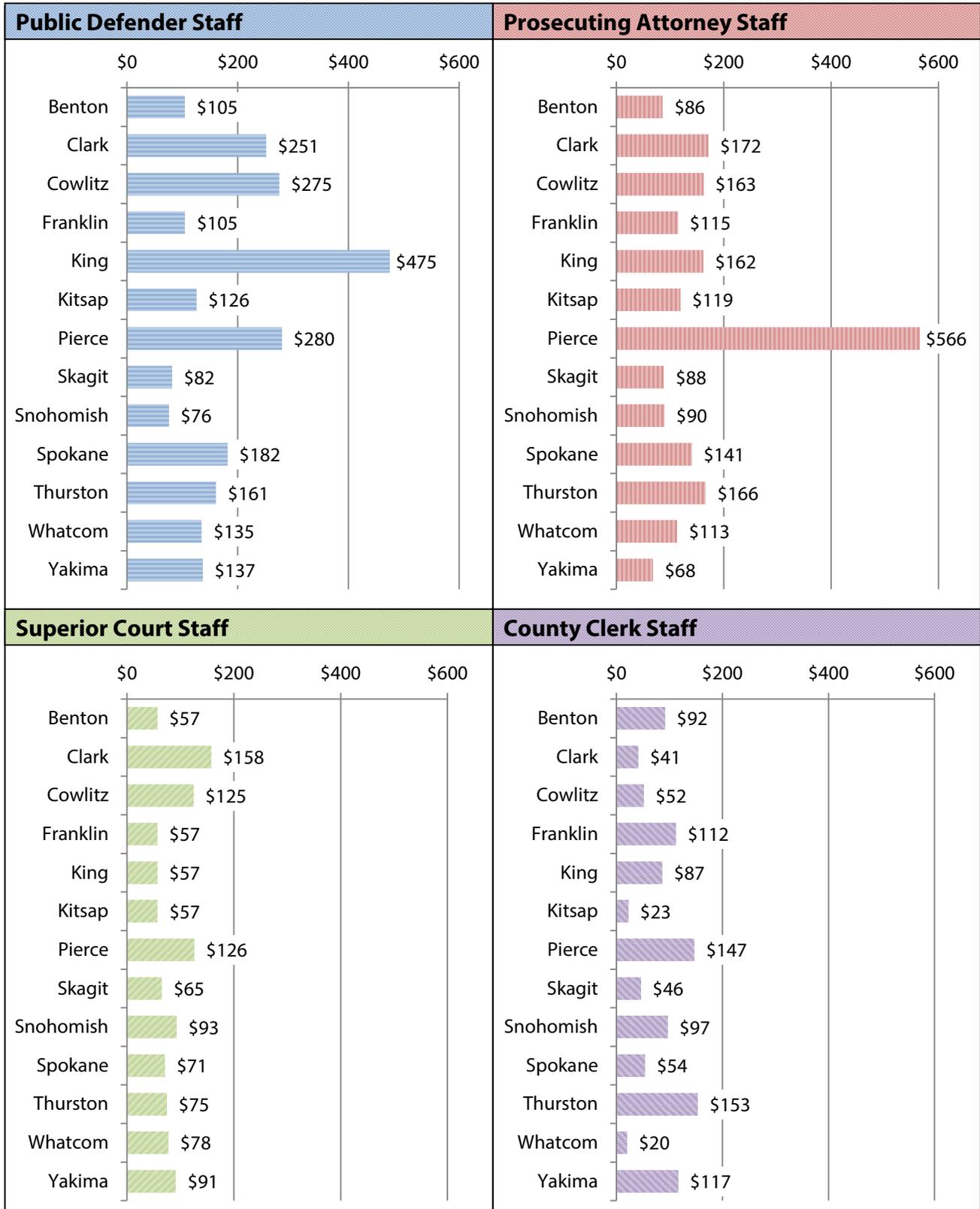
Personnel-related costs are basically the expenditures for staff and contractors involved in handling ITA cases. These are:

- Public defender and assistants;
- Prosecuting attorney, legal secretaries, and paralegals;
- Superior Court judge or commissioner and court clerks; and
- Staff in the offices of the county clerks.

One of the main reasons for differences among the counties in their average ITA judicial costs per case is the variation in expenditures on personnel-related costs.

Exhibit 7, on the following page, shows the variation among counties in personnel-related costs for each of the four roles.

**Exhibit 7 – Personnel-Related Costs Vary in All Four Judicial Roles
(Three-Year Average Cost Per Case)**



Source: JLARC analysis of county-reported expenditures.

Personnel-related costs are mostly comprised of salaries and benefits for the county employees and contract costs for some public defenders and court commissioners. However, six counties also included the costs of goods and supplies used to directly support the four roles.

The personnel-related costs for each county primarily reflect the compensation rates, numbers of cases, and amount of time spent handling the ITA cases. Therefore, the differences among these county personnel-related expenditures are due to: 1) differences in salary and benefit levels; 2) differences in the number of cases handled; and 3) differences in the amount of time spent by personnel in filing, preparing, and conducting hearings.

1. Differences in Salary and Benefit Levels

There is considerable variation in salaries and benefits among the counties. For example, in 2011, the average cost for a deputy prosecuting attorney in Benton County was under \$32 per hour, whereas the cost in Pierce County for the same role was over \$53 per hour. In general, higher salary and benefit levels contribute to higher average case costs.

2. Differences in Numbers of Cases Handled in a Year

In general, the more cases one person handles at a fixed salary, the lower the cost per case. The number of cases handled by each full-time equivalent staff member varies among counties. A caseload standard restricts public defenders in King County to no more than 250 cases per attorney per year. It appears none of the other counties adhere to a caseload standard for their public defenders and are not staffed at the level of this caseload standard. This may explain why the average case cost for public defenders in King County is greater than other counties. Estimates of public defender ITA caseloads in other counties ranged from 500 to 1,000 cases per full-time equivalent attorney per year.

There are no caseload standards for any other judicial role. However, we were able to collect some data for prosecuting attorneys, and based on what county prosecuting attorneys reported to JLARC about the time they spend on ITA cases, the number of cases per full-time equivalent attorney ranged from less than 500 cases to over 2,800.

3. Differences in the Average Amount of Time Spent Preparing for Cases and in the Courtroom

In general, the more time spent handling a case, the higher the cost per case. Results from JLARC's time and effort survey identified four reasons for differences among the counties in the number of cases handled by a full-time equivalent staff and their time spent in court and preparing for cases:

- **The number of court hearings included in a single case** – Multiple court hearings add to the cost of a case. A person involved in a civil commitment case may have more than one court hearing. Everything from when a petition is filed for a 14-day hearing through the conclusion of the court order from a 90-day hearing is one case;
- **Differences in the amount of time personnel in different counties reported in handling the same kinds of hearings** – These self-reported estimates of time varied greatly among the counties;

- **The overall mix of ITA hearings**– There are different kinds of ITA hearings. Counties reported that preparing for and conducting 14-day commitment hearings took more time than preparing for and conducting other types of ITA hearings such as continuances, less restrictive alternatives, reviews, and revocations. Counties vary in their mix of 14-day commitment and other types of hearings; and
- **The percentage of contested hearings and jury trials** – Counties reported that contested hearings take more time for both preparation and in the court than uncontested cases. Counties also reported that jury trials are the most time consuming of ITA hearings. This additional time on cases results in higher case costs.

Relatively small differences in these personnel-related factors such as the salary and benefits and the time spent preparing for cases and in the courtroom can lead to different case costs or case costs that are the same, but for different reasons.

Provision of Other Judicial Services Contributes to Differences in County Average Case Costs

Nine of the 13 counties reported costs for providing other judicial services as part of their ITA hearings. These other services include:

- Transportation/Mileage/Video Link;
- Security;
- Witnesses;
- Interpreters;
- Court Schedulers; and
- Emergency Medical Technician services.

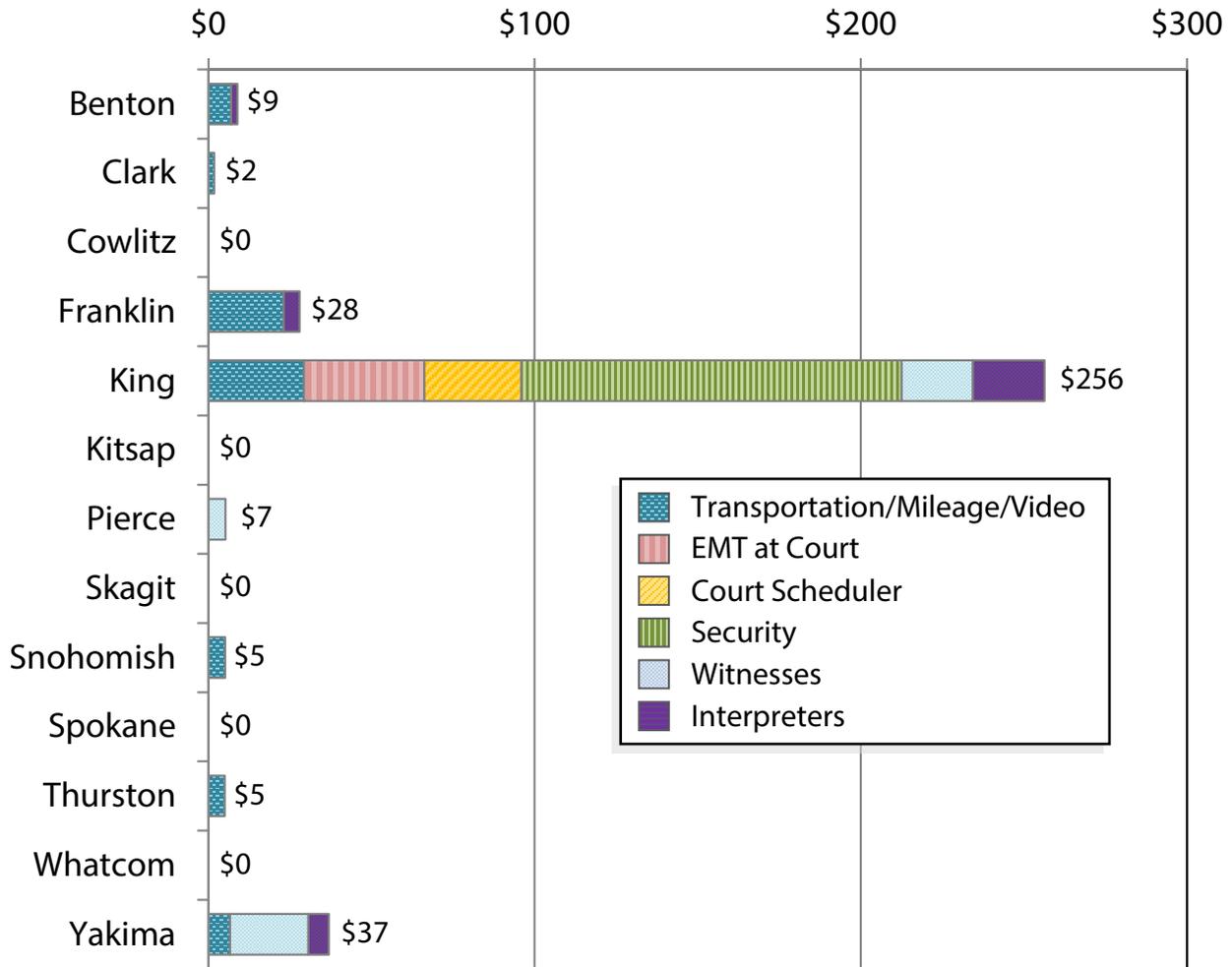
These other judicial service costs represented anywhere from 0 percent of the total expenditures reported by Cowlitz, Kitsap, Skagit, Spokane, and Whatcom Counties to 25 percent of the total expenditures reported by King County.

These other judicial service expenditures differed due to:

- Different approaches or needs counties have in conducting ITA cases;
- Whether a county reported a cost it has; and
- Whether the county or another entity, such as an E&T or RSN, paid the cost.

Not all counties reported costs in all of the categories. Some unreported costs may be reported by counties in the future, which may impact reimbursement rates when the rates are updated. Some of these other judicial services add only a small amount to the overall average case costs. However, in some counties the added costs can be significant. In King County, the combined costs for transportation, interpreters, witnesses, court scheduler, medical technicians, and security adds \$256 per case. Exhibit 8, on the following page, illustrates the differences among counties in average ITA cost per case that are attributable to the other judicial service expenditures.

Exhibit 8 – Most Counties Reported Very Few Other Judicial Service Costs (Three-Year Average Cost Per Case)



Source: JLARC analysis of county-reported expenditures.

Transportation, Mileage, and Video Link – For most hearings to occur, the respondent (patient) and the judicial personnel must be brought together in a courtroom. Counties have three different ways of doing this: 1) the respondent can be transported from the E&T facility to the courtroom; 2) the judicial personnel can travel to the E&T facility where a satellite courtroom has been set up; or 3) a video link can be used to connect a courtroom in one location with judicial personnel in another location.

King County was the only county reporting the transporting of respondents to a courtroom (at Harborview Medical Center). Transportation adds an average of \$29 to each ITA case in King County. Because King County transports the respondent, it did not report any mileage expenditures for judicial personnel.

Four counties reported mileage for judicial personnel at a cost ranging from \$3 per case in Snohomish County to \$12 per case in Franklin County. Within these counties, only one or two of the offices with judicial functions reported mileage. Based on our observations of ITA hearings, there may be unreported mileage costs in at least ten of the counties.

Yakima County is the only county using a video link to connect the court commissioner in one courtroom to a satellite courtroom at Yakima Valley Memorial Hospital. The estimated average cost of the video link is \$7 per case.

Security – King County was the only county to include security costs. The sheriff’s office charges \$350,000 per year for deputies posted at the Harborview courtroom. Security in King County adds an average of \$117 per case.

Expert or Statutory Witnesses – King, Pierce, and Yakima Counties included expert or statutory witness costs for the prosecution or public defense. Based on our observations of court hearings in ten of the 13 counties, witnesses may be in use in every county. For the counties that did not report any costs, it is possible that the E&T facility employs the expert witnesses (mental health professionals) used by the prosecution at hearings. If this is the case, the cost would be borne by the E&T facility, not the county.

The estimated average costs for witnesses ranged from \$5 per case in Pierce County to \$24 per case in Yakima County.

Interpreters and Translators – Three counties reported costs for interpreters or translators. The average reported costs ranged from \$2 per case in Benton County to \$22 per case in King County.

Other counties did not report costs for this activity. This could be because the use of interpreters or translators is infrequent and the costs might have been overlooked, not deemed to be large enough to worry about, or were paid by some other entity.

Court Schedulers – King County was the only county to specifically include “Court Scheduler” costs in the information it reported to JLARC. This person works at the Harborview Medical Center courtroom assisting with management of the docket. The average cost is \$30 per case for this service.

We interviewed individuals in Cowlitz, Thurston, and Whatcom Counties who have ITA case responsibilities which are similar to the scheduler in King County. However, these counties did not include these personnel in the county reported judicial costs because their costs are not incurred by the county. Rather they are employees of the E&T facility and their work on ITA cases is part of the service and treatment costs paid by the RSNs.

Medical Technicians – King County has emergency medical technicians from a private ambulance company in attendance at court hearings to stay with respondents until their hearings are concluded and the respondent is returned to the E&T facility. This service adds \$37 per case.

Conclusions

While 12 of the 13 counties do not have processes in place to capture the actual ITA expenditure data necessary to calculate average case costs, JLARC does provide the best possible estimates of average case costs for each county. These estimates are necessary because county rates are needed when the reimbursement process becomes effective on July 1, 2012.

Based on expenditures reported by the counties, estimates for average case costs range from \$282 in Skagit County to \$1,124 in Pierce County. Much of the variation in average case costs is due to differences in salaries and benefits; number and types of hearings; and amount of time spent on similar

Part Two – Variation in County ITA Judicial Costs

hearings. Some, but not all, counties reported expenditures for other services such as transportation, security, witnesses, and interpreters. Reported expenditures for these judicial services sometimes resulted in significant variations in the estimated ITA case costs.

Part Three of this report discusses opportunities to standardize guidance for counties on exactly which expenses qualify as “reasonable” allowable ITA judicial costs. We offer two recommendations to assure actual ITA expenditures are tracked and can be reported by counties and that case counts necessary for calculating reimbursement rates are accurate. Some alternatives for establishing and updating rates are also presented.

PART THREE – MOVING FORWARD WITH REIMBURSEMENTS

To Comply with Statute, Counties and State Agencies Need to Track and Audit ITA Information

The 2011 legislation assumes the availability of 1) actual ITA expenditure information, and 2) accurate ITA case counts. However, JLARC learned in the course of conducting this study that:

- Twelve of the 13 counties do not have processes in place to capture the ITA expenditure data necessary to calculate county average case costs using actual costs, as this information had not been required prior to the passage of SSB 5531;
- No detailed guidance is available for counties on exactly which expenses qualify as “reasonable,” allowable ITA judicial costs;
- No system is in place to specifically audit or review the county figures; and
- While counties report each year to the Administrative Office of the Courts (AOC) on their ITA case counts, AOC staff does not verify the data submitted by the counties or ensure a consistent definition of what constitutes an ITA “case.”

Establishing processes to address these shortcomings will require planning and future work by DSHS, AOC, counties, and RSNs.

Accurate Costs and Case Counts Needed – Recommendations

The Legislature’s intent for a community mental health program is to maximize the use of available resources for direct care of people with a mental illness and to assure uniform data collection across the state. Specific to the reimbursement of costs for Involuntary Treatment judicial services, the Legislature stated its intent for the state to reimburse counties, through the RSNs, for their costs in providing these services. To facilitate RSNs accurately reimbursing counties, actual cost data and accurate case counts are required. As described in the introduction to Part Three, there are shortcomings in both expenditure data and case counts, as counties had not previously been required to track this information. To address these deficiencies, JLARC offers two recommendations to assure that actual, uniform data is collected.

Recommendation 1

By January 1, 2013, the Department of Social and Health Services should report to the appropriate committees of the House and Senate a plan and timeline for implementing the ITA judicial cost reimbursement process under RCW 71.05.730. The report should include what should be done to:

- Determine allowable ITA judicial costs for inclusion in reimbursement rates;
- Establish contract provisions with RSNs that limit ITA judicial cost reimbursements to counties for their actual ITA judicial costs;
- Assure that actual cost data is collected, and reviewed or audited;
- Implement a method for updating rates; and

- Ensure that Maintenance of Effort as required in RCW 71.24.160 is met.

If applicable, DSHS should identify any resource needs, and may wish to comment on any alternate approaches to reimbursing counties for ITA judicial costs.

Legislation Required:	None
Fiscal Impact:	DSHS should determine the level of resources needed to do the necessary work.
Implementation Date:	January 1, 2013

Recommendation 2

The Administrative Office of the Courts should, consistent with RCW 2.56.030, take steps to ensure county Superior Courts and County Clerk’s Offices are consistently applying the definition of an ITA case contained in RCW 71.05.730.

Legislation Required:	None
Fiscal Impact:	JLARC assumes that this can be completed within existing resources.
Implementation Date:	January 1, 2013

Some Counties Had Already Established Separate Reimbursement Arrangements

Although statute did not establish a formal reimbursement process between RSNs and counties prior to 2011, some counties had already made arrangements with RSNs to be reimbursed. Below are two examples of different types of arrangements:

- Reimbursement Per Hearing (North Sound and Greater Columbia RSNs): Skagit County is one of five counties within the North Sound RSN. Per an interlocal agreement, North Sound RSN has agreed to pay Skagit County \$200 per hearing for “adequate judicial, prosecutorial, and support personnel and support services” for ITA hearings when the client resides within the RSN but outside of Skagit County. The Greater Columbia RSN has a similar payment-per-hearing arrangement with member counties in which ITA hearings are held for clients who reside within the RSN; and
- Cost reimbursement (Thurston and King): Thurston/Mason RSN currently funds one-quarter of the salary of a prosecutor and public defender and pays some of the court costs in Thurston County, while King RSN has agreed to cover all of King County’s ITA judicial costs.

It is not clear whether these arrangements could continue after July 1, 2012, when the new reimbursement process takes effect.

Alternate Methods to Establishing and Updating Reimbursement Rates Exist That May Be Less Costly, But Would Require Changes in Statute

SSB 5531 requires JLARC to provide “recommendations as to methods for updating the costs identified in the assessment to reflect changes over time.” Unless addressed, the deficiencies with expenditure and caseload data will create problems for future updates. Implementing the reimbursement process established in SSB 5531 will require time and work for counties, RSNs, and state agencies. As a result, JLARC reviewed alternate methods for updating rates that may be less resource-intensive and also address possible discrepancies in the estimated expenditures provided by counties.

These alternate approaches are discussed on the following pages and in greater detail in Appendices 3 and 4.

Alternate Methods to Establishing Reimbursement Rates

As described above, complying with statute – both in establishing the initial rates and updating rates on an ongoing basis – will require counties and state agencies to take on new tasks.

JLARC identified three methods currently used in the state to establish rates that may be less resource-intensive to implement than the requirements in statute. The alternate methods JLARC identified would not collect actual cost data; therefore, statute would need to be amended if these methods were to be used for ITA judicial reimbursements. These methods are:

- Single statewide reimbursement rate for judicial costs that applies to all counties and RSNs;
- Tiered rate structure (for example, high/medium/low) based on counties’ reported costs. This approach is similar to state Office of Financial Management’s per diem reimbursement for employee travel; and
- Use service bundling method using actual salary data and statewide average estimated time per case.

These methods are discussed in detail in Appendix 3. As described in the Appendix, there are tradeoffs in the various methods: gains in the ease of administration may be offset by a loss in accuracy; conversely, a higher level of accuracy would require more effort and administrative resources.

Alternate Methods to Updating Reimbursement Rates

In addition to establishing initial reimbursement rates, a new process would be needed to periodically update these rates in accordance with current statute. This process requires counties and state agencies to take on new tasks, likely requiring additional resources.

JLARC identified three methods currently used in the state to update rates that may be less resource-intensive to implement than the processes for updating ITA judicial reimbursement rates under current statute:

- Update reimbursement amounts by the change in Consumer Price Index, either based on the annual change in CPI or based on a rolling average three year change;
- Similar to DSHS’s approach to updating rates to counties for defending sexually violent predators, rates could be reevaluated when counties petition the agency with supporting data; and
- Reevaluate rates when key program changes or trends occur to assure that reimbursement rates remain accurate if a programmatic or workload change occurs.

These methods are discussed in detail in Appendix 4. They would not collect actual cost data; therefore, statute would need to be amended if these methods were to be used to update ITA reimbursement rates. These methods could be used simultaneously, and could also be applied to any of the alternate rate setting methods described in Appendix 3.

Conclusions

The estimated average case costs in Part Two of this report are the rates counties can use to seek reimbursement from their RSN and RSNs can use to bill other RSNs for ITA judicial services beginning July 1, 2012. However, JLARC found that “actual” expenditure information necessary to establish reimbursement rates, as required by SSB 5531, does not exist in 12 of 13 counties. The rates presented in this report represent the best estimates currently available. As described in this report, the quality of the underlying rates varies among the counties. JLARC provides initial estimates to start reimbursements, but case and cost data need improvements.

APPENDIX 1 – SCOPE AND OBJECTIVES

INVOLUNTARY COMMITMENT COSTS

SCOPE AND OBJECTIVES

DECEMBER 1, 2011



STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

STUDY TEAM

John Bowden
Tracey Elmore
Eric Thomas

PROJECT SUPERVISOR

Valerie Whitener

LEGISLATIVE AUDITOR

Keenan Konopaski

Joint Legislative Audit &
Review Committee

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(360) 786-5180 Fax

Website:

www.jlarc.leg.wa.gov

e-mail: barbara.neff@leg.wa.gov

Why a JLARC Study of Involuntary Commitment Judicial Costs

With the passage of SSB 5531 (2011), the Legislature directed JLARC to assess the direct costs counties incur when providing judicial services associated with involuntary commitments for mental health evaluations and treatment.

Current Law Allows Involuntary Civil Commitments

When a person is gravely disabled due to a mental disorder and presents a likelihood of serious harm to themselves or others, Washington’s Involuntary Treatment Act (1973) permits a designated mental health professional to commit the individual for 72 hours, against their will, to a mental hospital or center for evaluation and treatment. For a person to be held longer, an involuntary civil commitment hearing or trial in a court is required.

Counties Provide Judicial Services Related to Involuntary Commitments

Judicial services, as part of the involuntary commitment process, are typically provided in Superior Courts at the county level by judges or mental health court commissioners, court clerks, prosecuting attorneys, and public defenders.

According to data supplied by the state Administrative Office of the Courts, there were more than 8,900 involuntary treatment commitment hearings and trials in Washington State in 2010. However, only 12 counties have mental health evaluation and treatment beds and all but 5 of the involuntary commitment proceedings were held in these 12 counties.

2011 Legislation Provided Process for Reimbursement of County Judicial Costs

The Legislature stated that the intent of SSB 5531 is to “prevent the burden of these costs from falling disproportionately on the counties or regional support networks where the commitments are most likely to occur.” Effective July 1, 2012, the legislation creates a process for the state to reimburse counties, through the RSNs, for reasonable direct costs for judicial services. A county is allowed to bill the RSN

in which it is located for reasonable, direct judicial costs associated with involuntary commitments. In turn, if the individual is a resident of a county in a different RSN, the RSN where the commitment occurs is entitled to reimbursement from the RSN where the individual resides.

Study Scope

As mandated by statute, JLARC will review the judicial costs associated with involuntary civil commitments and analyze cost differences across counties. Additionally, JLARC will investigate methods for and identify factors associated with the periodic updating of judicial costs.

Study Objectives

This study will address the following three questions:

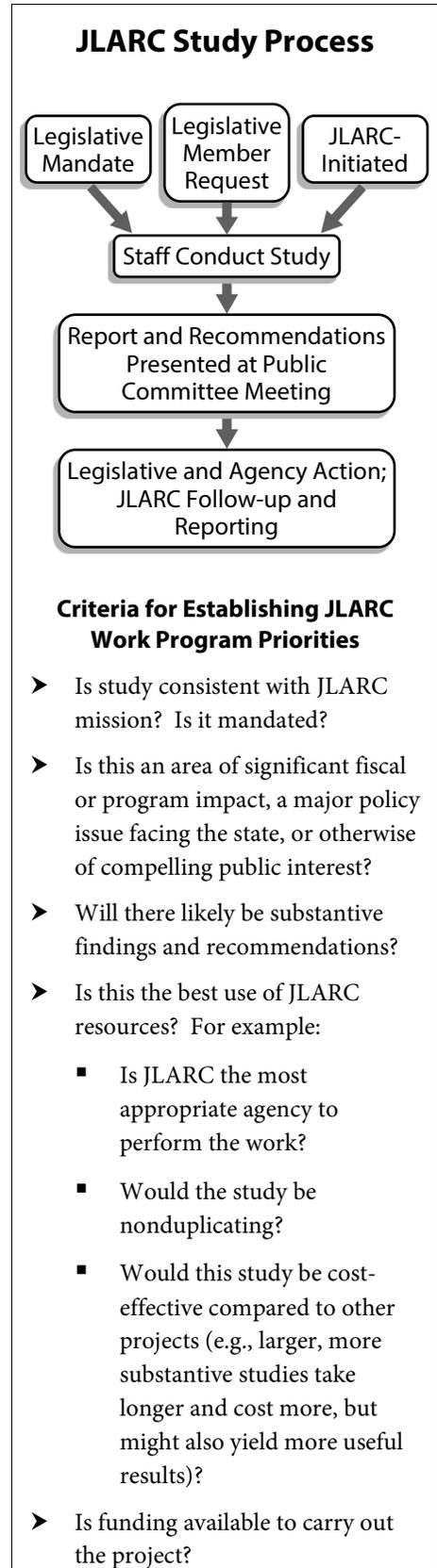
- 1) What are the estimated direct costs for judicial services provided in counties where more than 20 involuntary treatment civil commitment cases were filed in 2010?
- 2) What are the reasons for differences in civil commitment judicial costs among counties?
- 3) How can the estimated judicial costs be updated to reflect changes over time?

Timeframe for the Study

Staff will present its preliminary report at the May 16, 2012, JLARC meeting and the proposed final report at the July 18, 2012, JLARC meeting.

JLARC Staff Contact for the Study

John Bowden (360) 786-5298 john.bowden@leg.wa.gov
 Tracey Elmore (360) 786-5178 tracey.elmore@leg.wa.gov
 Eric Thomas (360) 786-5182 eric.thomas@leg.wa.gov



APPENDIX 2 – AGENCY RESPONSES

Agencies

Department of Social and Health Services	27
Administrative Office of the Courts	29
Office of Financial Management	31
Washington State Association of Counties	33

Counties and RSNs

King County Human Services	35
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Other Interested Parties

Washington Defender Association and Washington Association of Criminal Defense Lawyers	37
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**STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
P.O. Box 45010, Olympia, Washington 98504-5010**

May 21, 2012

Keenan Konopaski, Legislative Auditor
Joint Legislative Audit and Review Committee
1300 Quince St. SE
Olympia, WA 98504-0910

Dear Mr. Konopaski:

SUBJECT: Review of JLARC’s Preliminary Report, “Involuntary Treatment Judicial Costs”

Thank you for the opportunity to review The Joint Legislative Audit and Review Committee’s (JLARC) preliminary report “Involuntary Treatment Judicial Costs”. Our response to the report’s recommendations is as follows:

RECOMMENDATION	AGENCY POSITION	COMMENTS
Recommendation number one	Concur	
Recommendation number two	Concur	

The Department appreciates JLARC’s work in conducting this study as well as the collegiality of your staff. Should you have any questions regarding our comments, please feel free to contact Chris Imhoff, Director, Division of Behavioral Health and Recovery by telephone at 360-725-3770 or via email at chris.imhoff@dshs.wa.gov.

Sincerely,

Robin Arnold-Williams
Secretary

cc: MaryAnne Lindeblad, Assistant Secretary, ADSA
Pat Lashway, Senior Director, OPER
Kevin Krueger, Chief Risk Officer, DSHS
Chris Imhoff, Director, DBHR

RECEIVED
MAY 23 2012
JLARC



WASHINGTON
COURTS

ADMINISTRATIVE OFFICE OF THE COURTS

Jeff Hall
State Court Administrator

May 24, 2012

Mr. Keenan Konopaski
Legislative Auditor
Joint Legislative Audit and Review Committee
PO Box 40910
Olympia, WA 98504-0910

Dear Mr. Konopaski:

RE: Involuntary Treatment Judicial Costs: Actual Cost Data Not Available; Estimates Suggest Wide Range in Average Case Costs

Let me begin by thanking you and your staff for your engaged and open approach to this audit and report. We enjoyed the collegial working relationship that was established and maintained through the life of the project.

As we discussed at the exit conference, we do have some questions and concerns with recommendation # 2 and our formal response is as follows:

Recommendation	Agency Position	Comments
Rec. 2	Partially Concur	It is important for courts seeking ITA cost reimbursement under the statute to accurately count the number of eligible cases under the unique case definition contained in RCW 71.05.730. And, for purposes of consistency, it is important that all courts count those cases in the same manner. However, the information technology systems that the courts employ and the data that the AOC collects regarding caseloads do not use the same definition of a case. The definition of a case appropriately employed by the courts is the definition that aligns with judicial process. It is therefore not within the scope of responsibility or authority of the Administrative Office of the Courts under RCW 2.56.030 to mandate or audit caseload counts or reports for the purposes of reimbursement using a different definition of case.

STATE OF WASHINGTON
1206 Quince Street SE • P.O. Box 41170 • Olympia, WA 98504-1170
360-753-3365 • 360-586-8869 Fax • www.courts.wa.gov

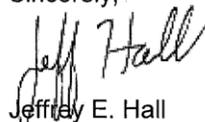
Letter to Mr. Keenan Konopaski
May 24, 2012
Page 2 of 2

During the exit conference it was understood that the audit did not yield specific information documenting varying practices among courts in how cases are to be handled under RCW 71.05.730, but did raise a question as to whether or not there might be differences in how cases were being counted under RCW 71.05.730. To the extent that the Administrative Office of the Courts (AOC) can facilitate a closer examination of case counting practices in several of the courts where questions were raised, we will assist in doing so, recognizing that the AOC has no formal authority to require courts to comport with a standard practice in this area and that the AOC has very limited resources at the present time and for the foreseeable future.

Finally, I would like to state our appreciation for the recognition within the report that the inability of courts to accurately count cases under RCW 71.05.730, and to capture related cost information, is largely a function of there never having been a need or mandate to do so in the past. The report is appropriately focused on what future steps may be taken to support a new process and standards for reimbursement of ITA costs.

Please feel free to contact me at (360) 357-2120 should you have any questions regarding this response.

Sincerely,



Jeffrey E. Hall
State Court Administrator

cc: Mr. John Bowden, JLARC



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

May 17, 2012

TO: Keenan Konopaski, Legislative Auditor
 Joint Legislative Audit and Review Committee

FROM: Marty Brown *MB*
 Director

SUBJECT: INVOLUNTARY TREATMENT JUDICIAL COSTS: ACTUAL COST DATA NOT AVAILABLE; ESTIMATES SUGGEST WIDE RANGE IN AVERAGE CASE COSTS – PRELIMINARY REPORT

Thank you for the opportunity to respond to your preliminary report titled: “Involuntary Treatment Judicial Costs: Actual Cost Data Not Available; Estimates Suggest Wide Range in Average Case Costs” and the recommendations contained in the report.

Recommendation	Agency Position	Comments
<p>1. By January 1, 2013, the Department of Social and Health Services should report to the appropriate committees of the House and Senate a plan and timeline for implementing the ITA judicial cost reimbursement process under RCW 71.05.730. The report should include what should be done to:</p> <ul style="list-style-type: none"> • Determine allowable ITA judicial costs for inclusion in reimbursement rates; • Establish contract provisions with RSNs that limit ITA judicial cost reimbursements to counties for their actual ITA judicial costs; • Assure that actual cost data is collected, and reviewed or audited; 	<p>Concur</p>	<p>The actions recommended are necessary to ensure that the judicial cost reimbursement provision in Substitute Senate Bill 5531 is uniformly applied statewide. DSHS is the appropriate agency to develop standardized billing, contracting, rate setting, and monitoring processes. DSHS is invited to identify needed resources to accomplish this task.</p>

Keenan Konopaski
 May 17, 2012
 Page 2

<ul style="list-style-type: none"> • Implement a method for updating rates; and • Ensure that Maintenance of Effort as required in RCW 71.24.160 is met. <p>If applicable, DSHS should identify any resource needs, and may wish to comment on any alternate approaches to reimbursing counties for ITA judicial costs.</p>		
<p>2. The Administrative Office of the Courts should, consistent with RCW 2.56.030, take steps to ensure county Superior Courts and County Clerk’s Offices are consistently applying the definition of an ITA case contained in RCW 71.05.730.</p>	<p>Concur</p>	<p>This is a reasonable and necessary action that AOC should take to ensure that the judicial cost reimbursement provision in Substitute Senate Bill 5531 is uniformly applied statewide.</p>

Again, thank you for the opportunity to comment. Please don’t hesitate to contact Carole Holland at 902-0580 with any questions.

cc: Stan Marshburn, Deputy Director, OFM
 Carole Holland, Senior Budget Assistant, OFM
 Carl Yanagida, Budget Assistant, OFM



May 25, 2012

Keenan Konopaski, Legislative Auditor
1300 Quince Street SE
PO Box 40910
Olympia WA 98504

Dear Mr. Konopaski,

Thank you for the opportunity to provide comments on the May 17, 2012 Preliminary Report on Involuntary Treatment Judicial Costs.

We appreciate the amount of time and effort that the Joint Legislative Audit and Review Committee (JLARC) staff put into this report and acknowledge the significant challenges JLARC faced: actual costs for Involuntary Treatment Act (ITA) judicial expenditures have not necessarily previously been recorded or made readily available. Additionally, Senate Bill 5531 does not provide sufficient clarity on what qualifies as a reasonable, allowable judicial cost.

To that end, we look forward to working with the Department of Social and Health Services to create greater definitional clarity on allowable ITA judicial costs and to help develop a consistent approach to statewide data and information collection. With respect to Recommendation 1, we see the possibility of significant resources needed locally to update accounting systems depending on the process that DSHS determines for cost reporting. Finally, as you embark on future audits that aggregate data from multiple counties, we feel it is beneficial to develop shared assumptions to ensure counties are reporting with consistency and comparable data sets.

Sincerely,

A handwritten signature in cursive script that reads "Eric Johnson".

Eric Johnson
Executive Director

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www.wacounties.org/wsac



King County

**Mental Health, Chemical Abuse
and Dependency Services Division**

Department of
Community and Human Services

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Seattle, WA 98104

206-263-9000

206-296-0583 Fax
206-205-1634 Fax – Clinical Services
205-205-0569 TTY/TDD

May 22, 2012

Washington State Legislature
Joint Legislative Audit and Review Committee
1300 Quince Street SE
Olympia, WA 98504

Dear Committee Members:

Thank you for the opportunity to provide comments on the May 17, 2012, Preliminary Report on Involuntary Treatment Judicial Costs.

We were pleased to see that King County was credited in the report with providing the necessary actual cost data. This is due to the fact that King County Regional Support Network (KCRSN) has paid for all of the involuntary treatment judicial costs for over 30 years. The funding to pay for these costs comes out of KCRSN's state non-Medicaid funds. For this reason, it is very important that KCRSN is fully reimbursed for the legal costs incurred when individuals from other counties are sent to King County hospitals for involuntary treatment. Nearly 60 percent of all the psychiatric hospital beds in the state are in King County. As a result, people are disproportionately committed to King County from other counties and KCRSN bears disproportionate legal costs for the commitment hearings associated with these individuals.

In terms of the recommendations in the report regarding establishing and updating reimbursement rates, we request that since King County has complete and accurate cost data, the reimbursement rate for King County be set using the actual cost data submitted. King County will update the cost data on a regular basis. Since the other counties do not have accurate cost data, we understand that some averaging or other methodology may need to be used to determine their reimbursement rates. These alternate methodologies are not necessary for King County, nor would they fairly compensate King County for the expenses incurred by KCRSN for the large number of residents from other counties (over 400 people in 2011) who are committed to King County hospitals.

Thank you for your consideration.

Sincerely,

Amnon Shoenfeld
Director

WASHINGTON DEFENDER ASSOCIATION
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

JLARC Preliminary Report on Involuntary Treatment Judicial Costs

WDA and WACDL members strongly support the intent of SSB 5531 to reform funding for ITA civil commitment proceedings. However, we believe that implementation will require close monitoring and input from system participants to assure that the current inadequate funding and system practices are appropriately resolved. We would be happy to work together with the legislature and state entities to ensure these reform efforts fulfill the bill's legislative intent.

- **The Washington State Bar Association's *Standards for Indigent Defense Services* support a professional caseload of 250 for public defenders handling ITA cases. We would urge the JLARC report to indicate that this is a standard that should be met.** This standard has been adopted by most counties under the requirements of RCW 10.101.030. However, none of the counties, including King County, currently meet this standard due in large part to the funding and process issues described in the report. (The Defender Association of King County reports its contracted caseload is for 410 cases not 250). In addition, uniformity in case definitions and case counting across jurisdictions is lacking.
- **The wide disparity in existing caseloads, ranging up to 1,000 cases per year per attorney, illustrates the disparity of resources, cost, and justice by jurisdiction based on the funding system in place. This disparity has been aggravated by the centralization of treatment to the 13 counties still maintaining evaluation and treatment facilities, which has taken a grossly inadequate situation and made it worse.**
- **Future funding should be based upon data that has been thoroughly analyzed and discussed.** This statute is designed to correct the funding system that helped produce this disparity and we strongly urge that future formulas be based upon **professional standards and the accurate tracking of system expenditures.**

For more information, contact:

Bob Cooper: (206) 852-3616 or bob@EvergreenPublic.com;

or

Christie Hedman (206) 623-4321 or hedman@defensenet.org.

Washington Defender Association | 110 Prefontaine Pl. S., Suite 610 | Seattle, WA 98104 | 206-623-4321
WDA is a non-profit organization created in 1983 to promote, assist, and encourage public defense systems which ensure that all accused persons in every court receive effective assistance of counsel

Washington Association of Criminal Defense Lawyers | 1511 Third Ave., Suite 503 | Seattle, WA 98101 | 206-623-1302
WACDL is a non-profit organization working to improve the quality & administration of justice by protecting & insuring by rule of law those individual rights guaranteed by the Washington and Federal Constitutions

APPENDIX 3 – ALTERNATE METHODS TO ESTABLISHING COUNTY ITA JUDICIAL COST REIMBURSEMENT RATES

JLARC offers three alternate methods of establishing rates for consideration to provide the Legislature with options that may be less resource-intensive than the current law. The methods would not require counties to collect actual cost data; therefore, they would require changes to statute and may not provide the most accurate reimbursement amount to counties.

There are tradeoffs between each of these methods for establishing reimbursement rates: gains in ease of administration, such as a single statewide rate, may be offset by a loss in accuracy; conversely, a higher level of accuracy would require more effort and administrative resources.

Exhibit 9 – Alternate Rate Reimbursement Methods – Pros and Cons

Standard Statewide Rate for Reimbursement	Tiered method based on reported cost differences (high/medium/low)	Use service bundling method
Why is this option presented, and who uses it?		
<ul style="list-style-type: none"> • DSHS uses a standard rate schedule to reimburse counties for legal services for sexually violent offender civil commitments. 	<ul style="list-style-type: none"> • A tiered rate (high, medium, low) recognizes regional differences, but also recognizes data limitations – the current data are estimates. • Tiered rate structure is used by OFM and the federal General Services Administration for per diem reimbursements. 	<ul style="list-style-type: none"> • Diagnostic related groups (DRGs) “bundle” services (labor/non-labor) needed to treat a patient with a particular disease. • Federal government creates a rate of payment based on the “average” cost to deliver care (bundled services) to a patient with a particular disease. • Technique used in Medicare to establish payment schedules in an environment where reported costs for similar services varied greatly.
Advantages		
<ul style="list-style-type: none"> • Simplifies ITA reimbursement process • Transparent 	<ul style="list-style-type: none"> • Method recognizes regional cost differences more than a single statewide rate would • Easier to administer than separate rates for each of the 13 counties 	<ul style="list-style-type: none"> • Appears feasible based on the time and effort surveys JLARC administered to counties • Improves salary data by using actual salary data
Disadvantages		
<ul style="list-style-type: none"> • Some counties may not receive full reimbursement for their costs, while others could receive more. • RCW specifically recognizes regional differences. 	<ul style="list-style-type: none"> • Some counties may not receive full reimbursement for their costs, while others could receive more. • Although it distinguishes between county costs more than a single rate, it does not account for actual costs. 	<ul style="list-style-type: none"> • Time per case remains an estimate • Requires initial work of establishing time/effort of four county ITA roles • Updates would require updating rates for each role in each county (52 adjustments)
What is needed to implement this method?		
<ul style="list-style-type: none"> • Criteria for a single rate 	<ul style="list-style-type: none"> • Criteria for the number of rate tiers and which counties would fall into which tier 	<ul style="list-style-type: none"> • Additional survey work of each of the 13 counties is needed on time and effort • Actual salaries needed for all four key ITA roles for each of the 13 counties
<div style="display: flex; justify-content: space-between; align-items: center;"> ◀ <div style="text-align: center;"> <p>Accuracy lower Administration less difficult</p> </div> <div style="text-align: center;"> <p>Accuracy higher Administration more difficult</p> </div> ▶ </div>		

Source: JLARC.

APPENDIX 4 – ALTERNATE METHODS TO UPDATING COUNTY ITA JUDICIAL COST REIMBURSEMENT RATES

JLARC offers three alternate methods of updating rates for consideration to provide the Legislature with options that may be less resource-intensive under the current law. The methods in Exhibit 10 would not require counties to collect actual cost data; therefore, they would require changes to statute and may not provide the most accurate reimbursement amount to counties.

The three methods described on the following page are not mutually exclusive and could be used simultaneously. For example, rates could be updated biennially based on the change in inflation. A county may petition to have its reimbursement rate changed **if** it compiles data showing that it should receive a higher amount.

Exhibit 10 – Alternate Rate Reimbursement Update Method – Pros and Cons

Adjust rates on a schedule (annually, biennially)		Reevaluate rates when petitioned by counties with supporting data	Reevaluate rates when key program changes or trends occur
Update reimbursement amounts by the change in Consumer Price Index	Adjust rates based on three-year average to account for fluctuations in the economy		
Why is this option presented, and who uses it?			
Interlocal agreement between Skagit County and North Sound RSN requires an annual update to be based on the change in CPI.	<ul style="list-style-type: none"> Used by federal Centers for Medicare and Medicaid Services to update the Federal Medical Assistance Percentage (FMAP) To determine the rate, the federal government relies on three years of data to account for fluctuations in the economy. 	<ul style="list-style-type: none"> In administering the Sexually Violent Offender program, DSHS reviews reimbursement rates biennially for adequacy. According to staff at the Special Commitment Center, changes in rates are driven by written comments and data from counties. 	Rates for Medicare provider payments are often updated based on specific trending factors, such as the Medicare Economic Index or a Medicaid-specific trend factor.
Advantages			
Reflects economic changes of most recent year	<ul style="list-style-type: none"> Consistent with study directive: base rates on three-year average Rates would not be adjusted for a year that is an anomaly. 	Provides opportunity for counties to supply actual data and be reimbursed for actual, direct costs	Assures that reimbursement rates remain accurate if a programmatic or workload change occurs
Disadvantages			
Change in inflation may not reflect the actual change in counties' legal costs	Change in inflation may not reflect the actual change in counties' legal costs	Counties that fail to provide actual cost data would continue to be reimbursed for an estimate, which may be more or less than warranted.	Program changes may not occur frequently enough to keep pace with change in counties' legal costs.
What is needed to implement this method?			
Entity must calculate updated rate	Entity must calculate updated rate	Entity must evaluate data and determine a per case rate	Threshold of "key program change" would need to be identified
All three approaches could be implemented simultaneously.			

Source: JLARC.

