



King County

Metropolitan King County Council
Budget and Fiscal Management Committee

Agenda Item No.: 6
Proposed No.: 2011-0461

Date: February 7, 2011
Prepared By: Polly St. John

STAFF REPORT

SUBJECT:

Proposed Motion 2011-0461 amends the public defense payment model to incorporate the changes adopted in the 2012 budget.

SUMMARY:

The transmitted motion will update the public defense payment model that is required to be updated every three years. The 2012 adopted budget incorporates the assumptions included in this proposal. In addition, the 2012 budget also adds \$1,500,000 in additional funding for felony credits and provides \$1,800,000 for assigned counsel and expert witnesses.

BACKGROUND:

Public defense services are mandated by the U.S. Constitution, the Washington State Constitution and other state statutes. King County Code 2.60.101 states that indigent defense services will be made available to provide legal representation for those that are eligible. The primary cost driver is caseload, which is controlled by the number of arrests and case filings.

The Contract Model

For over thirty years, King County has provided public defense services by contracting with nonprofit defender organizations formed for the specific purpose of providing legal defense services to the indigent as well as other independent contractors. Those contracting firms are (1) the Associated Counsel for the Accused (ACA), (2) the Northwest Defenders Association (NDA), (3) the Society of Counsel Representing Accused Persons (SCRAP), and (4) The Defender Association (TDA).

Prior to 2004, the Office of Public Defense (OPD) prepared its budget by relying on information provided by each of the agencies which resulted in different payments to each agency for the same work provided. In an effort to make these payments more efficient and more equitable, the County Council adopted Motion 12160 in July of 2005. This motion approved what is now known as the “public defense payment model” or just the “model”.

This model moved the county to a process of paying a fixed amount or “credit” per type of case. Under the defender agency contracts, the county pays for “caseload” on a workload basis (using increments called “case credits” which represent the number of attorneys and other resources, such as social workers and investigators that are allocated to each case).

The OPD payment model has been used since 2006 to prepare the annual budget and structure the payment amounts in the defender agency contracts. The purpose of the model is to provide a common basis of payment that is consistent across all defender agencies based on contractor costs. The model includes a methodology to reach a uniform price per credit calculation for caseloads. The model includes salary and benefit costs, administrative costs, direct and indirect overhead rates, general office operational costs, rental costs, mileage costs, and an adjustment to bring defense attorney salaries into parity with the Prosecuting Attorney's Office (PAO) attorneys. The annual OPD budget reflects changes in the contract payment model that are based upon an estimation of caseload and the factors listed above.

Periodically, since adoption of the model, the Executive has suggested changes to the model and the defense agencies have voiced their opinions on the Executive's recommended changes. This discussion often occurs during the budget review and adoption time-period, when the Council is least able to thoughtfully consider the changes.

Motion 12160, the original model legislation, specified that the payment model is to be updated and revised every three years, as needed, to account for changes to business practices and needs. In 2009, the Council adopted Ordinance 13004, which amended the public defense payment model to incorporate the changes that were highlighted in a proviso report attached to Ordinance 13003.

ANALYSIS:

The Council adopted 2012 OPD budget increased by \$5.6 million over 2011 and reflects the proposed model updates that are detailed in Proposed Motion 2011-0461.

Attachment 3 shows \$2.3 million in model generated contract variances between 2011 and 2012. Changes from the previous budget include staffing updates, calendar business practices, rental adjustments, mileage rates, salary and benefit adjustments, previous expenditure data, and estimated caseload changes. These changes are generated by the payment model.

In addition to the model variances shown in Attachment 3, the 2012 budget was increased by \$1,800,000 for assigned counsel and expert witness costs and by \$1.5 million for modified case weighting expenditures. These costs were included in the OPD budget to provide staffing relief for cases requiring more than 12.1 hours to complete.

It is estimated that the 2012 OPD budget is fully funded and supplemental appropriations will most likely not be needed in 2012. *(As a reminder, the County budgets at an appropriation level. The total budget appropriation cannot be exceeded without additional expenditure authority; however, cuts or contras can be managed*

within the total appropriation and are not associated with specific line items included in the budget.)

Note: The Council should anticipate legislation in the first quarter of 2012 to approve updated contracts between the County and the defense agencies. The payment model is used to calculate the amount to be paid to each contractor for each case area and for administration/overhead, which is identified separately in the contract. The rates paid per unit of work in each case area and per FTE for administration/overhead are uniform among all contractors – as generated by the model.

REASONABLENESS:

Proposed Motion 2011-0461 would incorporate the recommended changes into the payment model legislation that the Council approved during the 2012 budget deliberations. Passage of the legislation would constitute a reasonable business decision.

INVITED:

- Jackie MacLean, Director, Department of Community and Human Services (DCHS)
- David Hocraffer, Public Defender, DCHS
- Dwight Dively, Director, PSB
- Krista Camenzind, Budget Manager, PSB
- Anne Daly, Director, Society of Counsel Representing Accused Persons
- Eileen Farley, Director, Northwest Defenders Association
- Don Madsen, Director, Associated Counsel for the Accused
- Floris Mikkelsen, Director, The Defender Association

ATTACHMENTS:

1. Proposed Motion 2011-0461, including Attachment A
2. Transmittal letter dated November 2, 2011
3. Crosswalk for 2011 to 2012 OPD contracts

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KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 6, 2012

Motion

Proposed No. 2011-0461.1

Sponsors Patterson

1 A MOTION amending the public defense payment model, which
2 established a framework for budgeting indigent legal defense
3 services in King County.

4 WHEREAS, the King County council established the public defense payment
5 model in 2005, by Motion 12160, which was incorporated in the 2006 Budget Ordinance
6 and implemented in the 2006 public defense contracts, and

7 WHEREAS, the public defense payment model is updated and revised every three
8 years as needed to account for changes to business practices and needs, and

9 WHEREAS, the public defense payment model was revised in 2009 by Motion
10 13004, and

11 WHEREAS, revisions were necessary to account for business changes for the
12 2012 budget year and contracts to be implemented in that year, and the revisions are
13 incorporated in the amended public defense payment model, Public Defense Payment
14 Model for General Fund Expenses for Indigent Public Defense Services in King County,
15 Attachment A to this motion;

16 NOW, THEREFORE, BE IT MOVED by the Council of King County:

17 The King County council hereby adopts the amendment to the public defense
18 payment model, Attachment A to this motion.
19

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, ____.

Dow Constantine, County Executive

Attachments: A. Public Defense Payment Model for General Fund Expenses for Indigent Public Defense Services in King County

**Public Defense Payment Model
for General Fund Expenses for
Indigent Public Defense Services
in King County**

This model shall be used as the framework to develop the Executive's proposed annual budget for indigent legal defense services. An indigent defendant is a person determined indigent by the County, the County's Office of Public Defense or Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101. The purpose of the model is to create uniform rates to be paid to contract agencies providing indigent legal services for direct expenses including salaries and benefits and indirect expenses including overhead and administrative costs.

STEP 1: Project the Annual Caseload Credit Volume

The model begins with an annual estimate of the number of case credits in nine case areas. Each type of case shall be assigned a number of case credits. A case credit represents the amount of attorney work required. The total number of credits that each attorney is expected to perform annually, known as the "caseload standard," is listed below.

<u>Case Area</u>	<u>Caseload Standard</u>
• Complex felony (e.g. death penalty, homicide cases)	150 credits
• Regular felony	150 credits
• King County misdemeanor	450 credits
• Juvenile	330 credits
• Involuntary Commitment	410 credits
• Dependency	180 credits
• Becca – ARY/CHINS	250 credits
• Becca – Truancy	375 credits
• Contempt of Court – child support enforcement (PAO filed)	Calendar basis
• Contempt of Court – private party filed (not PAO filed)	225 credits

STEP 2: Calculate the Price Per Credit for Each Case Area

The model budgets for legal services on the basis of a price per credit for each of the nine case areas. The components listed below are calculated to arrive at the price per credit:

- A. Salaries
 - 1. Attorney Salaries
 - 2. Supervisor Salaries
 - 3. Non-legal Professional Support Staff Salaries
 - 4. Clerical Staff Salaries
- B. FICA (Social Security + Medicare Taxes)
- C. Benefits
- D. Direct Overhead Costs Related to Legal Practice
 - 1. Legal Staff
 - 2. Non-Legal Staff

E. Mileage and Parking

A. Salaries

1. **Attorney Salary:** The model budgets public defender attorney salaries at parity with similarly situated attorneys (where positions budgeted in the model are in comparable classifications with comparable duties and responsibilities) in the Office of the Prosecuting Attorney (PAO). For the purposes of the model, salary means pay exclusive of benefits. Alignment of Public Defender attorney to Prosecuting Attorneys will be done annual based on January PAO attorney levels.

$(\text{Weighted Average Attorney Salary}) / \text{Caseload Standard} = \text{Attorney Salary Price per Credit.}$

2. **Supervisor Salary:** The model funds the contract requirement of each defender agency to provide a ratio of 0.1 supervisors for each attorney. Supervisors will be placed at same levels as Senior Attorneys above.

$(\text{Weighted Average Supervisor Salary}) \times 0.1 / \text{Caseload Standard} = \text{Supervisor Salary Price per Credit.}$

3. **Non-Legal Professional Support Staff Salaries:** The model funds the contract requirement of each defender agency to provide sufficient professional support staff (social worker, investigator and paralegal) for each attorney. The non-legal support staff salary price per credit is based on the average market rate for paralegals, investigators and social workers taking into account the percentage distribution of full time employees (FTEs) in the three non-legal staff categories in the 2010 system. The model payment standard is 0.5 professional support staff per attorney with an annual cost of living adjustment (COLA) increase.

$(\text{Weighted Average Non-Legal Staff Salary}) \times 0.5 / \text{Caseload Standard} = \text{Non-Legal Salary Price per Credit.}$

4. **Clerical Staff Salaries:** The model funds the contract requirement of each defender agency to provide sufficient clerical staff for each attorney. The clerical staff salary price per credit is based on the average market rate for clerical. The model payment standard is 0.2 clerical staff per attorney with an annual COLA increase.

$(\text{Clerical Staff Salary}) \times 0.2 / \text{Caseload Standard} = \text{Clerical Salary Price per Credit.}$

- B. **FICA (Social Security + Medicare Taxes):** Employers are required to pay 6.2 percent in Social Security and 1.45 percent in Medicare payroll taxes for each employee, for a total of 7.65 percent.

$(A1+A2+A3+A4) \times .0765 = \text{FICA Cost per Credit.}$

- C. **Benefits:** The model budgets for benefits based on the 2010 benefit amount per agency FTE inflated annually at the rate of inflation experienced by the County flex benefit plan. The model does not prescribe the type of benefits contract agencies provide to their employees.

1. **Calculate the Benefit Allocation per FTE.** The projected inflation rate will be adjusted in the following year to reflect the actual inflation rate.

(2010 benefit amount per FTE) x (2011 and 2012 projected inflation rate) = 2012 Benefit Allocation per FTE.

2. **Calculate the Benefit Price per Credit.**

(Benefit Allocation per FTE) x (1.80) / Caseload Standard = Benefit Price per Credit.

D. Direct Overhead Allocation Related to the Practice of Law

1. **Calculate the Legal Staff Overhead Allocation and Price per Credit:** The model budgets this allocation on a rate-per-attorney basis most recent completed year as a baseline taking into account the following categories: liability insurance, licenses, continuing legal education, memberships and dues, library costs, and computer desktop replacement. A COLA increase is applied annually.

- A. Legal Staff Allocation / Number of Attorneys = Legal Admin Rate per Attorney.
- B. Legal Admin Rate per Attorney / Caseload Standard = Legal Admin Rate Price per Credit.

2. **Non-Legal Staff Overhead Allocation and Price per Credit:** The model budgets this allocation on a rate-per-FTE basis for investigators, social workers and paralegals using most recent completed year system costs as a baseline taking into account the following categories: liability insurance, licenses, training and education, memberships and dues, library and desktop replacement. A COLA increase is applied annually.

- A. Non-Legal Staff Admin Allocation / Number of Non-Legal FTEs = Non-Legal Staff Admin Rate per FTE.
- B. Non-Legal Staff Admin Rate per FTE / Caseload Standard = Non-Legal Admin Rate Price per Credit.

E. Mileage and Parking

The model budgets this allocation on a rate-per-FTE basis for attorneys, investigators, social workers and paralegals using most recent completed year system costs as a baseline.

1. 2010 System Costs / 2010 County Mileage Rate x 2012 Expected County Mileage Rate / FTEs in the system = 2012 Benefit Allocation per FTE.
2. 2012 Mileage Allocation per FTE / Caseload Standard = Mileage Price per Credit.

STEP 3. Calculate the Total Price Per Credit

The formula for calculating price per credit in each case area is as follows:

Salaries (A1+A2+A3+A4) + FICA (B) + Benefits (C) + Legal and Non-Legal Staff Administrative (D1B + D2B) + Mileage (E) = Total Price per Credit.

STEP 4. Indirect Administrative and Overhead Allocations

For indirect administrative/overhead costs including office operations, capital equipment purchases and leases and other agency-related costs and for agency administration, the model uses a percentage rate which is to be derived from the 2010 rate of administrative/overhead costs to total direct expenditures (caseload and calendar related salaries, benefits, FICA, and legal-related administrative expenses). Adjustments may be made to the rate to accommodate for business process changes which may occur from time to time. Each contract agency will be allocated a percentage share of the total allocation based upon the agency's share of the total system direct costs.

(Total direct expenditures) x % Rate = Total Indirect Admin/Overhead Allocation.

STEP 5. Rent Allocation:

A. Calculate the number of FTEs required to manage the three year average caseload volume as follows:

1. Attorneys: calculated directly from the caseload standards and calendar tables.
2. Supervisors = (# of attorneys) x 0.1.
3. Non-legal professional and clerical support = (# of attorneys) x 0.7.
4. Administrative staff.

B. Calculate the estimated square footage per contract agency as follows:

1. Assign each personnel category above in A1-4 an appropriate square footage allocation not to exceed the 2011 adopted County space standards, as contained in King County Ordinance 17171.
2. Multiply the FTE in each category by the square foot allotment;
3. Apply an allocation for special spaces such as storage, lunch rooms, and conference rooms; and
4. Calculate the circulation allowance for commons areas, restrooms and hallways not to exceed current County standard of 25 percent as follows: (B2 + B3) x 0.25.

(B2 + B3 + B4) = Total Square Footage.

C. Calculate the total rent allocation:

1. The cost per square foot shall be based on a rolling three-year market average cost per square foot, including operating costs, for Class B office space in two locations. The model may take into account market fluctuations or escalator provisions in existing leases:
 - 1) Downtown Seattle – Central Business District; and
 - 2) Kent – within reasonable proximity to the Regional Justice Center.

(Average Cost Per Square Foot) x (Total Square Footage) = Total Rent Allocation.

2. Each contract agency will be allocated a share of the rent amount based upon the agency's share of the total system FTEs in each of the two locations.

STEP 6: Calendar Attorney and Staff Allocation

- A. Compile the list of court calendars to be assigned to each attorney.
- B. Calculate the costs for salaries, FICA and benefits for attorneys, supervisors and non-legal staff assigned to calendar duty as follows:
1. Number of Attorney FTEs x Attorney Salary per FTE = Total Attorney Cost.
 2. Number of Supervisor attorneys x Supervisor Salary per FTE = Total Supervisor Cost.
 3. Number of Staff FTEs x Non-Legal Support Staff Salary per FTE = Total Non-Legal Staff Cost.
 4. (Total Attorney Cost + Total Non-Legal Staff Cost) x .0765 = FICA Cost.
 5. (Total Attorney and Non-Legal Staff FTEs) x (Per FTE Benefit Allocation) = Benefit Cost.
 6. Number of Attorneys x Legal Admin Rate per Attorney=Legal Staff Direct Overhead.
 7. Number of Non Legal Support Staff x Non-Legal Staff Admin Rate per FTE=Non-Legal Staff Direct Overhead.
 8. Compute administrative and overhead costs using the rate in Step 4.
- C. Calculate the total cost for calendar attorneys and staff as follows:
(B1) + (B2) + (B3) + (B4) + (B5) + (B6) + (B7) + (B8) = Total Calendar Allocation

Each contract agency will be provided with an allocation directly related to the specific calendars they have been assigned.

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November 2, 2011

The Honorable Larry Gossett
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Gossett:

King County has a long history of providing high quality public defense services. The quality of the King County public defense system has been recognized both statewide and nationally. Among the features that contribute to the quality of public defense services have been the standards incorporated into the contracting process, including adequate support staff such as investigators, paralegals and social workers; attorney qualification requirements; salary parity for defense counsel with the prosecuting attorneys, funding administrative overhead costs for operating public defense contractors; caseload limits and adherence to performance guidelines.

King County Code, Section 2.60, directs the King County Office of Public Defense (OPD) to provide primary public defense services through contracts with non-profit public defender agencies. In 2005, the King County Council passed Motion 12160, which established a Public Defense Payment Model, first implemented in budget and contract year 2006.

The Public Defense Payment Model serves as the analytical framework for calculating costs to provide indigent defense services in order to guide preparation of the proposed annual appropriation for public defense services and to structure contracts for public defense services. The Public Defense Payment Model created a uniform and transparent cost structure across all public defense contracts. It contained numerous features and standards that serve to protect public defense clients, and promote fairness for the attorneys and staff providing public defense services.

Motion 12160 specified that the Public Defense Payment Model is to be updated and revised every three years, as needed, to account for changes to business practices and needs. The Public Defense Payment Model was revised in 2009 by Motion 13004.

The Honorable Larry Gossett

November 2, 2011

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Revisions were necessary for the 2012 budget year to account for business changes. Those revisions have been incorporated into the King County Executive's Proposed 2012 Budget. The total change, including proposed efficiencies, from the 2011 Adopted Budget for OPD attributable to incorporating these Public Defense Payment Model changes, is an increase of \$1,131,167.

The revisions are reflected in the amendments to the Model, as contained in Attachment A, Public Defense Payment Model for General Fund Expenses for Indigent Public Defense Services in King County, to the motion transmitted to effectuate these revisions.

King County public defense contracts have incorporated prior revisions to the Public Defense Payment Model and will need to incorporate further provisions in 2012 to reflect proposed budget changes.

If you have any questions, or need additional information, please feel free to contact Jackie MacLean, Department of Community and Human Services Director, at 206-263-9100.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Cindy Domingo, Acting Chief of Staff
Mark Melroy, Senior Principal Legislative Analyst, BFM Committee
Anne Noris, Clerk of Council
Joe Woods, Deputy Chief of Staff, King County Executive Office (KCEO)
Carrie Cihak, Director of Policy and Strategic Initiatives, KCEO
Gail Stone, Law and Justice Policy Advisor, KCEO
Frank Abe, Director of Communications, KCEO
Jackie MacLean, Director, Department of Community and Human Services (DCHS)
V. David Hocraffer, Division Director, Office of Public Defense, DCHS
Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)
Krista Camenzind, Budget Manager, PSB
Anne Daly, Director, Society of Counsel Representing Accused Persons
Eileen Farley, Director, Northwest Defenders Association
Don Madsen, Director, Associated Counsel for the Accused
Floris Mikkelsen, Director, The Defender Association

Changes relating to Contract budgets - 2011 adopted to 2012 proposed				
2012 PSQ Changes	Annual updates	3 year updates	Total Changes	Note
2011 COLA Savings			525,000	Amount inadvertently omitted from 2011 Adopted
Annual Model Updates				
Calendar Staffing (72 Shelter case support staff)	116,647	-	116,647	Model had support staff only for NDA. OPD added for all agencies
Direct OH for support staff	66,034	-	66,034	Rounded to full FTEs
Mileage	(1,190)	-	(1,190)	IRS mileage rate went down from 51 cents in 2011 to 50.5 cents
Rent (price and caseload changes)	(175,014)	-	(175,014)	Rent for Seattle area went down from \$30.26 to \$28.60
COLA	401,106	-	401,106	PSQ COLA set at 1.77%
Merit	385,589	-	385,589	Parity estimate for 2012
Benefits Inflation	168,954	(26,822)	142,133	Benefits increase set at 5% at PSQ
Parity Adjustment	(332,344)	(5,649)	(337,993)	Model adjusted to reflect pay parity with PAO
Three year updates				
Professional Salaries		(825)	(825)	Based on salary survey
Clerical Salaries		131,048	131,048	Based on salary survey
Benefits		323,031	323,031	Based on 2010 expenditure data from contractors
Direct OH Attorney		(96,305)	(96,305)	Based on 2010 expenditure data from contractors
Direct OH Staff		(24,410)	(24,410)	Based on 2010 expenditure data from contractors
Mileage		13,280	13,280	Based on 2010 expenditure data from contractors
Admin OH		515,404	515,404	Based on 2010 expenditure data from contractors. Rate went from 7.6% to 10.09%.
Indirect OH		172,687	172,687	Went up because OPD used full cost of capital purchases instead of depreciation
Other PSQ Adjustments				
Complex Assigned Counsel	(25,492)	-	(25,492)	AC was included in contracts category for complex (agg. murder), this is removed
Dependency FTC	128,013	-	128,013	Added to GF \$128k included in non-GF portion of model in 2011.
Beeper	(49,474)	-	(49,474)	Had been inadvertently omitted previously
Becca	104,204	-	104,204	Case load change from 305 credits to 471 credits
Total PSQ changes to Model	787,034	1,001,440	2,313,474	
Total PSQ Budget for OPD Contracts			32,377,946	
Additional changes from PSQ to Exec. Proposed				
Rent - common areas sq ft reduction			(170,127)	Reduced common areas by 6K sq ft (included in ER01)
Overhead - depreciation			(171,461)	Used depreciation instead of capital purchases (included in ER01)
Benefit Rate Change			(259,467)	Effect of revised KC benefits rates for 2011 (0% increase) and 2012 (8% increase) (included in ER01)
Professional staff direct OH (formula correction)			(56,251)	This is to correct formula in PSQ (item 2 under Annual Update, above) (Incorporated in caseload change items in proposed budget)
Caseload Changes			597,037	Changes to Felony, Juvenile, Misdemeanor, Dependency/FTC, Becca, and ITA credit amounts in model (PC02, PC03, PC04, PC06, PC07, RB01)
Total changes from PSQ In Proposed Budget			(60,269)	Changes at Proposed also reflect change in COLA rate from 1.77% to 1.63% and change in IRS mileage rate from 50.5 cents to 55 cents.
Total 2012 Proposed Budget for OPD Contracts			32,317,676	
2011 Adopted Budget for OPD Contracts			30,064,472	
Change from 2011 Adopted budget			2,253,204	