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Attachment D

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The Honorable Cynthia Sullivan, Chair  
Metropolitan King County Council  
1201 King County Courthouse  
Seattle WA 98104

Re: **Response to Motion 11491**

Dear Chair Sullivan and Members of the Council,

The adopted 2003 budget for the Prosecuting Attorney's Office (PAO) contains a proviso mandating this report, which, according to the proviso language, should "at a minimum contain:

- a detailed and quantified analysis of the prosecutor's budget projections for 2004 through 2006 and;
- its quantified estimates of how it will reduce or otherwise contain expenditures, and;
- identify options for helping reduce other law and justice agency expenditures
- In addition, the prosecutor should identify alternative sources of revenues for itself and for the other law and justice agencies."

Motion 11491 also called upon the PAO to prepare for the budget process in 2004 and 2005 by "identifying policy and operational, changes, developing proposals, and identifying cost savings that will contribute to a balanced budget, and which will offset the \$110 million budget shortfall by as much as the \$50 million that may be required to balance the budget.."

With these goals as our guide, we submit this report that will address the requested matters and provide a context to better understand the Office of the Prosecuting Attorney, its resources, revenue, and obligations to meet its numerous and voluminous workload demands.

I. The Prosecuting Attorney's Office

A. Budget Growth and Program Reductions

Over the past two adopted budgets, the PAO has taken reductions in its base budget of \$2.4 million with the resultant elimination of 24 FTEs. The current "target reduction" instructions from the Executive request another \$1.5 million budget cut. Despite these cuts, the total budget number continues to grow.

Approximately 95% of the PAO budget goes to salary and benefit costs for employees. Like much of the rest of the county, the salary and benefit costs for the PAO escalates at a rate that

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surpasses what the growth in the current expense fund can sustain. This is why the total budget amounts continue to grow even as we make severe cuts in the base budget. Thus, our projected budgets for 2004, 2005, and 2006 grow at an annual rate of between 5% and 6% and assume no new FTEs. (See Appendix A for detailed projection)

The average cost of a mid-level deputy prosecutor is approximately \$90,000 (salary and benefits) and the average cost of an administrative staff member is \$55,000 (salary and benefits). The effect of a \$1.5 million base budget reduction is equal to a reduction of 16 deputies, or 27 staff or some combination of the two. A reduction of this magnitude will have devastating impacts on core functions of the PAO.

As seen below, the total CX funded portion of the PAO budget is approximately \$27 million. A base reduction of \$1.5 million equals a 5% cut of the CX portion of the PAO budget.

#### B. Revenue

The proviso calls for some discussion of outside revenue sought and obtained by the PAO. A significant portion of the PAO budget is made up of non-CX revenue from these sources: state government, non-cx funds of the county budget, the federal government, and municipal contracts:

State Funds: \$6.4 million  
Non CX-Funds: \$6.2 million  
Crime Victim Penalty Fines: \$739,000  
Federal Funds: \$645,000  
Municipal Contracts: \$470,000  
**Revenue Total: \$14,453,000**

For the past several years, the PAO has been committed to seeking outside revenue to fund many important programs. Currently, the PAO has five Criminal DPAs who are grant-funded: three funded by a U.S. Department of Justice grant, designed to prosecute firearms crimes; one funded by JAIBG, designed to work directly with schools, and one funded by grant, designed to fight truancy and keep kids in school.

In addition, our office has four Special Drug Unit DPAs, whose costs are largely paid for by the City of Seattle (1 DPA), the King County Sheriff's Office (1 DPA), South King County (1 DPA) and Valley Narcotics (1 DPA).

The PAO continues to seek and take advantage of grant opportunities. Recent research into available grants reveals that the majority of grant funds available today are geared toward Homeland Security and Anti-Terrorism. At the present time, we have been unable to secure additional grant funds for these activities. We remain committed to exploring grant opportunities, as they become available.

The PAO has also been supportive of the County's legislative efforts to secure additional funding, such as the creation of a county utility tax and seeking reimbursement from the State for extraordinary criminal justice costs.

### C. Workload and Workload Trends

While the base budget is undergoing annual reductions, the workload remains at historical high points.

The PAO is a responsive agency, receiving referrals from law enforcement in criminal and fraud. Police agencies bring cases for legal review and court rules set mandatory timelines for action. Plaintiffs sue the county and clients seek advice. Each of these actions requires a PAO reaction - delay or default is not an acceptable option. As a result, the PAO has little control over its incoming workload.

The measurements of criminal caseload in the PAO over the past three years reveal a workload that is high, but stable:

- Felony cases referred by law enforcement numbered 13,998 in 2002, down less than 1% from the previous year. The three year average measured 14,080;
- Felony filings were down to 8,261 from 9,351 – a drop almost completely attributable to the Prosecuting Attorney’s drug charging policy change that directs some drug possession as misdemeanor cases directly into District Court instead of felony cases filed into Superior Court. While this policy saves money for OPD, these cases still require the same amount of review by PAO DPAs in order for charges to be filed. The three-year average of cases filed is 9,142.
- Felony trials in 2002 numbered, 1070; the average for the past three years is 1,068.

### D. Felony Murder Case: Unanticipated Workload

The Washington State Supreme Court recently issued the mandate in State v. Andress, holding that the crime of murder in the second degree based on the “felony-murder” law was inapplicable to homicides where the underlying felony was assault. The case overturns more than 25 years of practice in the criminal courts and could potentially require new trials for as many as 120 King County cases where the defendants are presently incarcerated.

The PAO, OPD, and the Superior Court are assisting the Budget Office in the assessment of this impact of homicide cases on the criminal justice system. The PAO tentative plan is to hire six TLT deputies to provide backfill while a team of experienced prosecutors tackles the huge influx of murder appeals based on Andress. The 120 cases will be spread among at least six experienced deputy prosecutors for legal assessment and preparation to meet motions for new trials. It is anticipated that a large number of these cases will eventually receive new trials in Superior Court.

## II. The PAO as a Part of the Criminal Justice System

Over the past several years, the PAO has consistently worked with other criminal justice agencies to develop new practices and new policies that save money, especially in public defense, the courts and the jail. Many of these efficiencies were the direct result of PAO leadership.

The combined results of these efforts have been savings of hundreds of thousands of dollars, primarily within the budget of the Office of Public Defense.

### A. Community Corrections Alternative

The Council is familiar with the numerous initiatives taken by all CJ agencies to reduce jail population and build an infrastructure of alternatives to jail. These are the subject of another monthly proviso and will not be discussed in detail here.

The staff of the PAO spends a great deal of time and energy on making this initiative a success while maintaining the integrity of the court system and protecting public safety. The results of jail population decline have already been measured and budget savings captured in the adopted 2003 budget.

### B. New CJ System Treatment Money

The PAO was a leader in the statewide reform of the drug sentencing laws that will result in millions of new treatment dollars coming to King County. The new treatment dollars will open up opportunities for the PAO to redirect new categories of cases into Drug Court. As with prior PAO policy decisions making changes to Drug Court eligibility, the new criteria will result in savings to OPD and the Court. The flow of treatment money from the state to the County will significantly exceed prior estimates. It should begin this year.

### C. Drug Expedited Program

The PAO has expanded its policy of moving certain possession cases from Superior Court to District Court. The effect of this shift is that many non-violent offenders charged with drug possession can choose either to enter drug treatment (drug court) or to do a short jail term after pleading guilty to a reduced charge in the District Court. The benefits to this approach is that it offers help to those who are truly ready for aggressive treatment and provides a swift and certain punishment for those who are not. At the same time, precious Superior Court resources are freed up to concentrate on more serious offenders. It is estimated that the annual savings to the County of this increased "expedited" policy is about \$800,000 in public defense savings.

### D. Jail Health Costs

The CJ Council has committed to assist the Council and Executive in the review of jail health costs, which exceed \$20 million annually. The PAO has implemented an emergency case review system to encourage early legal review of cases involving inmates facing significant medical expenses.

E. DWLS Re-licensing Program

The PAO continues to receive, review and file thousands of misdemeanor D.W.L.S. 3<sup>rd</sup> degree cases, but the Re-licensing Program allows the case to be stayed pending the efforts of the defendants to pay off (or work off) outstanding fines and have their driving privileges re-instated. This program has saved hundreds of thousands of dollars in the OPD budget.

III. The \$50 Million Cost-Cutting Challenge

At it's core, Motion 11491 challenges the agencies of the criminal justice system to assist the Council by *"identifying policy and operational, changes, developing proposals, and identifying cost savings that will contribute to a balanced budget, and which will offset the \$110 million budget shortfall by as much as the \$50 million that may be required to balance the budget."*

The efficiencies described above are one way to reduce expenditures within the system, but the savings will not generate a figure close to \$50 million. The \$50 million figure is equivalent to most of the Sheriff's Office, or almost twice the CX portion of the PAO budget.

To continue to cut each CJ agency 5% or 10% a year is not the best approach to this problem. To reach a cut of this magnitude, severe program reductions would have to take place in each agency. Public safety and criminal justice services would be reduced to a level below what most officials and citizens would find acceptable.

There are few dramatic policy options available that could result in major system savings. The best option we can offer is the commitment to continue to work on cost-saving initiatives while we work to preserve a justice system that works for the people of King County.

IV. Conclusion

In addition to managing the responsible disposition of its workload with fewer attorneys and staff, the PAO expects to expend much time and energy on the major economic issues facing the CX fund of the County. We will continue to be a leader within the CJ Council and seize and implement the best ideas for bringing further efficiency to our practice without sacrificing law, safety, or justice.

# Appendix A

## Current Expense

### Annual Growth Assumptions

Salaries	4.5% (2% COLA and 2.5% Step Increase)
Medical Benefits	15.0%
Retirement	5.0%
Industrial Insurance	5.0%

Category	2003 Budget	2004 PSQ Budget	2005 Projected Budget	2006 Projected Budget
Salaried Employees	\$ 27,897,873	\$ 29,169,021	\$ 30,481,627	\$ 31,853,300
Temporary	\$ 647,727	\$ 647,727	\$ 647,727	\$ 647,727
Overtime	\$ 27,460	\$ 27,460	\$ 27,460	\$ 27,460
Loan-in	\$ 1,475	\$ 1,475	\$ 1,475	\$ 1,475
<b>Flex Benefits</b>				
OASI	\$ 4,596,000	\$ 5,499,273	\$ 6,324,164	\$ 7,272,789
Retirement	\$ 2,114,121	\$ 2,202,492	\$ 2,331,844	\$ 2,436,777
PCB-Trust	\$ 489,267	\$ 806,756	\$ 847,094	\$ 889,448
Industrial Ins.	\$ 190,114	\$ 190,114	\$ 190,114	\$ 190,114
	\$ 175,848	\$ 188,218	\$ 197,629	\$ 207,510
52000 Accts.	\$ 482,162	\$ 482,162	\$ 482,162	\$ 482,162
53000 Accts	\$ 1,845,563	\$ 2,078,641	\$ 1,845,563	\$ 1,845,563
55000 Accts	\$ 2,633,619	\$ 3,051,913	\$ 2,633,619	\$ 2,633,619
56000 Accts	\$ 14,300	\$ 14,300	\$ 14,300	\$ 14,300
57000 Accts	\$ 31,995	\$ 31,995	\$ 31,995	\$ 31,995
59000 Accts	\$ 83,991	\$ (67,535)	\$ 83,991	\$ 83,991
<b>SubTotal</b>	\$ 41,231,515	\$ 44,324,012	\$ 46,140,764	\$ 48,618,231
Ridgway Adjustments				\$ (1,591,354)
Andress Adjustments	\$ 319,604	\$ 529,169		
<b>Total</b>	\$ 41,551,119	\$ 44,853,181	\$ 46,140,764	\$ 47,026,877
Annual % Increase		7.9%	2.9%	1.9%