



King County

Metropolitan King County Council Law & Justice Committee

STAFF REPORT

Agenda Item:	5	Name:	Jenny Giambattista
Proposed No.:	2019-0313	Date:	September 11, 2019

SUBJECT

A motion acknowledging receipt of a report reviewing the extent to which there is parity between the Prosecuting Attorney's Office and the Department of Public Defense.

SUMMARY

The report provides background on the Department of Public Defense (DPD) and the Prosecuting Attorney's Office (PAO) and describes the budget, staffing, and practice areas for each agency. The report notes that "because the respective bodies of work generally cannot be compared for parity beyond compensation, no further budget actions are identified."

In response to Council staff questions, both agencies provided information (Attachments 3 and 4) on additional needs for their agencies. The PAO noted the need for additional resources to address filing backlog and the increasing complexity of cases as well as resources to provide victim advocacy and navigation to the thousands of crime victims in King County. DPD identified a need for more support staff particularly paralegals and investigative staff as well as supervisory support staff.

BACKGROUND

King County Code section 2.60.026 requires the Public Defender to ensure that the American Bar Association's Ten Principles for a Public Defense Delivery System guide the management of the Department of Public Defense and development of department standards for legal defense representation. These principles call for parity between public defense and prosecution.

Principle 8 of the ABA standards establishes the criteria for parity stating, "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system." This principle provides further commentary including, "This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation."

The 2019-2020 budget included a proviso for the Office of Performance Strategy and Budget requiring a report on parity between the Prosecuting Attorney's Office and the Department of Public Defense.

The report shall include, but not be limited to a definition of parity, which includes caseloads. The report shall review the extent to which there is parity in the staffing and budgets between the prosecuting attorney's office and the department of public defense, examine the staffing levels for each court and provide budget options for achieving parity between the two agencies.

ANALYSIS

As described in the transmitted report, the Prosecuting Attorney's Office and Department of Public Defense provide different services and play different roles in King County's legal systems, thus complicating direct comparisons. The report provides relevant background information on the differences in how the two agencies are structured.

For example, the PAO prosecutes all cases in its jurisdiction including cases assigned to DPD and those in which the defendant has hired a private attorney.¹ In addition to criminal work, the PAO provides legal advice to all King County agencies and departments through its Civil Division. The PAO supports families in seeking child support through its Family Support Division and provides victim assistance, as well as other special programs. The PAO also participates in diversion programs such as Law Enforcement Assisted Diversion (LEAD) and Legal Intervention and Network of Care (LINC). Additionally support staff in the PAO are only paid for a 35 hour work week whereas staff in DPD are paid for a standard 40 hour week.

Public Defense organizes staff by case type within each of its four divisions. The Standards for Indigent Defense specify ratios of support staff and supervision for attorneys. DPD's budget is based on these required ratios. Supervisors sometimes carry caseloads depending upon the volume of work in their unit and when staff are on leave. DPD employs investigators to conduct its own investigations of alleged crimes, whereas law enforcement agencies generally conduct all investigations for the PAO. In addition, DPD provides mitigation specialists, typically licensed social workers, to gather information on mitigating circumstances of clients and provide assessments and referrals to services. In addition, DPD uses a vertical representation model in which the attorney assigned to a case at the outset represents that client throughout the case.

When comparing staffing levels, the role of private and Assigned Counsel (AC) should be considered. In addition to using staff attorneys, DPD maintains an Assigned Counsel (AC) panel of private attorneys who handle cases that involve ethical conflicts and when DPD attorneys have reached their caseload maximum. According to DPD's 2019 Annual Report, approximately 10 percent of cases were sent to AC in 2018 (page 4).

¹ The PAO estimates that ten to 35 percent of cases are represented by private attorneys¹.

As shown in the figure below from the report, there are some areas of overlap in the practice areas between DPD and PAO.

Figure 1

PAO and DPD Practice Areas



Additionally, as shown below, there is some overlap in the types of staff employed by both agencies. However, these positions may be used differently.

Figure 2



The table below is from page 11 of the transmitted report and provides for a comparison in the areas of overlap by court and by type of staff. The corrections reflect revised data provided by the PAO.

**Figure 3
Court Staffing by Department, 2019²**

Court	Position Type	PAO	DPD
Superior Court	Attorneys	74.7	71.7
Superior Court	Supervisors & Support	50 ³ 64.0	30.0
Superior Court-ITA	Attorneys	7.0	18.0
Superior Court-ITA	Supervisors & Support	4.5	6.0
Superior Court-Juvenile	Attorneys	8.0	9.4
Superior Court-Juvenile	Supervisors & Support	13.0	4.4
District Court	Attorneys	18.2	18.9
District Court	Supervisors & Support	21.4	12.9
General/Pooled	Supervisors & Support	7.0	11.8
Subtotal		203.8	183.1
	PAO Filers & Support	23.32	NA
	PAO Advocates	12	NA
	PAO Records & Discovery	21	NA
	DPD Investigators	NA	34
	DPD Mitigation Specialists	NA	22
Subtotal		56.32	56
Grand Total		260.1	239.1

With the exception of the ITA court, the number of attorneys is relatively similar between the PAO (108) and DPD (118). The additional DPD attorneys for ITA court may be explained by the necessity of the DPD attorneys to travel to different locations to meet their clients and caseload standards which require higher numbers of attorneys for DPD

There are significant differences between the two agencies in the number of “Supervisors and Support Staff.” To more fully understand the significance in the difference in the number of supervisors and support staff between the agencies would require an analysis of the type of work done by all of the reported job titles in order to

² PAO as of May 1, 2019. DPD as of April 23, 2019. PAO Supervisors & Support includes co-chairs, vice-chairs, and team leads. PAO filers are allocated 60% to filing and 40% as attorneys. PAO Advocates includes advocate supervision and excludes Protection Order Advocates. DPD Superior Court includes Seattle, Kent, Drug Court, and Drug Offender Sentencing Alternative (DOSA). District Court includes Regional Mental Health Court.

³ On August 5, PAO provided this correction and noted that the 50 “support and Supervisors” includes 15 attorney supervisors, 10 staff supervisors and 25 paralegals. Subtotals and totals for the PAO have been adjusted to reflect this change.

evaluate whether there are comparable bodies of work that are not equally resourced. This analysis was not done as part of the proviso response.

Council staff asked both the PAO and DPD for additional information in order better understand the differences in staffing numbers highlighted in the report and address the proviso request for budget options for achieving parity between the agencies. Both agencies reported a need for additional resources related to the increasing complexity of cases with the proliferation of body cam, dash cam, surveillance cam, cell phone tower data, cell phone data, DNA, etc. Specific agency needs are discussed below.

Highlights from PAO Response (Attachment 3) Based on the work week hour difference, PAO reports it would need to have 12.5% more support staff to cover the same amount of work as DPD's staff. Additionally, the PAO notes that approximately 22 percent of the PAO Superior Court case load comes from criminal cases that DPD does not staff at all. Put another way, PAO reports that to be comparably staffed for each case, PAO would need 22 percent more attorneys and staff overall.

With regard to the greater number of PAO support staff and supervisors for juvenile court, the PAO notes this includes the staffing for the diversion cases which DPD does not have.

The PAO also noted that "...when DPD has hit their caseload "limit," they assign overflow cases to "conflict/capacity" counsel. As such, they are assured to maintain a certain level of staffing to adequately address their workload. The PAO does not have the same opportunity. Instead, the PAO shifts from existing resources to triage caseload needs. As a result, older, less violent cases, sit in a backlog waiting to filed"

The proviso report prepared by PSB did not recommend any budget changes. Council staffed asked PAO for any recommended staffing level changes to achieve parity. The report notes that "the best way to address proper funding would be to divorce the idea of parity entirely. The parties do different tasks, with different responsibilities, with staff paid at a different rate, with different caseloads. To have a robust criminal justice system each side should be examined individually to ensure core functions are adequately addressed."

The PAO identified significant deficiencies in the agency's budget, including filing backlogs and the level of resources required to review cases that have become more complex as noted earlier in the staff report. The PAO also notes a need for victim advocacy or navigators for victims of shootings, robbery, kidnapping, and stabbings. The PAO notes this is an ESJ issue since an overwhelming majority of violent crime victims are marginalized and/or people of color.

Highlights from DPD Response (Attachment 4) According to DPD, the number of clerical and paralegal staff is based on Standards six and seven of the 2011 Washington State Bar Association's Standards for Indigent Services which establishes a floor for resources for public defense services.

Standards Six and Seven require one investigator and one paralegal for every four attorneys; DPD's labor contract and staffing model combine the categories of paralegal

and investigator into a single category of “support staff 3” and require one support staff person per two attorneys. DPD reports because different practice areas call for different kinds of work (drug court vs. felony trials, for example), the dedicated ratio of paralegals, investigators, and attorneys in different practice areas does not always reflect the 4/1/1 divide imagined by the WSBA standards; DPD tries to adjust support staff availability and time in a way that maximizes this limited resource. Whereas the PAO relies on police agencies and the Washington State Patrol Crime Lab for investigative work, DPD must use its own investigative staff. Thus, even though the staffing model combines “support staff” into a single category, DPD’s need for investigators means that any support staff allocation must be significantly consumed by investigative staff.

DPD noted that the current ratio of 1 investigator to 4 attorneys fails to adequately meet the agency’s investigative needs. DPD has begun their own internal analysis in combination with a review of comparable public defense agencies and recommends changing the ratio of investigators to attorneys from 1 investigator to 4 attorneys to 1 investigator for every 3 attorneys. DPD reports Superior Court judges O’Donnell (Superior Court Chief Criminal Judge) and Galvan both have expressed a growing frustration with the lengthening of the time to resolution/adjudication of cases because of the limited availability of defense investigators.

DPD reports that while the current attorney supervisory levels at DPD are adequate, DPD lacks adequate support staff and adequate supervision of support staff. As discussed above, unlike PAO, DPD does not have external partners to conduct investigation, and all investigation must be done by DPD staff. DPD must obtain outside experts to perform the functions that the Washington Crime Lab performs for PAO. Changing standards of practice mean that DPD lawyers use investigators at higher rates, and caseloads of DPD investigators are growing.

Regarding paralegals, as discussed above, DPD reports it would benefit greatly from using this job class to its full potential but several roadblocks prevent it from doing so. DPD notes the problem begins with the fact that DPD lacks sufficient supervisor positions to create paralegal supervisors who would be able to ensure consistency. Increasing the ratio of paralegals to lawyers would allow DPD to hire paralegals with demonstrated legal research and writing skills. Placing such paralegals under the supervision of newly created paralegal supervisors and within practice units where their skills would be most applicable and according to DPD it would allow the department to reap the benefit of this position. DPD further notes that increasing the ratio from the 2011 WSBA Standards of 1:4 makes a great deal of sense given the substantial increase in case complexity and discovery amount. Paralegals’ duties require them to be familiar with the facts and the law involved in each of their cases to nearly the same degree as an attorney working on the case. For example DPD reports, under a 1:4 ratio, this requires a highly performing paralegal to be familiar with four times as many cases as the lawyer being supported. In the context of a misdemeanor unit, where the caseload maximum for an attorney is 400 cases, the ratio would require a paralegal to perform the above functions in 1600 cases over the course of a year (or 600 felony cases). Whether or not this was possible in 2011 when the WSBA articulated the standards discussed above, no one person could now competently learn the facts, watch the body worn camera video, keep track of the witnesses, and be familiar with the

legal issues in so many cases. DPD concludes, as the complexity of cases continues to increase and the volume of discovery grows, the ratio of support staff to attorneys must keep pace.

AMENDMENT

No amendments.

INVITED

- Hon. Dan Satterberg, King County Prosecutor
- Dwight Dively, Director, Office of Performance, Strategy, and Budget
- Anita Khandelwal, King County Public Defender

ATTACHMENTS

1. Motion 2019-0313 and attachments
2. Transmittal Letter
3. Prosecuting Attorney's Office response to Council staff questions
4. Department of Public Defense response to Council staff questions