

**PUBLIC
DEFENSE
ADVISORY
BOARD
2018 ANNUAL
REPORT**



King County



King County

King County Public Defense Advisory Board

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TABLE OF CONTENTS

INTRODUCTION	1
A YEAR OF TRANSITION AND NEW DIRECTION: LEADING FOR THE FUTURE	2
A DEVELOPING LEADERSHIP STRUCTURE.....	3
QUALITY OF PUBLIC DEFENSE SERVICES	4
COMPLIANCE WITH ABA’S TEN PRINCIPLES	4
COMMENTS BY JUDGES AND PROSECUTORS.....	9
WORKFORCE	10
BASIC STAFFING INFORMATION.....	10
COLLECTIVE BARGAINING AGREEMENT.....	10
KING COUNTY AUDITOR’S REPORT.....	11
BUDGET AND STAFFING	11
CASE MANAGEMENT AND OUTCOMES.....	13
ORGANIZATIONAL STRUCTURE	15
EQUITY AND SOCIAL JUSTICE	15
RECOMMENDATIONS	17
THE DEPARTMENT’S PROGRESS IN ADDRESSING THE BOARD’S 2017 RECOMMENDATIONS...	17
PROGRESS IN ADDRESSING THE BOARD’S 2017 EQUITY AND SOCIAL JUSTICE	
RECOMMENDATIONS	20
2018 RECOMMENDATIONS.....	23
2018 EQUITY AND SOCIAL JUSTICE RECOMMENDATIONS	24

INTRODUCTION

In 2017, the King County Public Department of Public Defense (“DPD” or “the Department”) represented more than 15,000 indigent individuals in courts throughout King County.¹ These clients – adults and children accused of crimes; adults and children struggling with disabling mental illness; families separated by the State due to allegations of neglect or abuse; and parents accused of failing to pay child support – faced loss of their liberty, financial penalties and, in some cases, termination of their rights as parents. The Department’s clients struggle with poverty, addiction, a broken mental health system, the consequences of structural racism, and an increasingly hostile environment for undocumented immigrants. The core work of DPD, representing indigent people who are accused, is intimately bound up with the County’s commitment to equity and social justice.

This Annual Report is prepared in fulfillment of the Board’s statutory responsibility under King County Code §2.60.031.H to issue to the King County Executive and King County Council each calendar year a report “on the state of county public defense” that includes “an assessment of the progress of the county in promoting equity and social justice related to the criminal justice system.” This is the fourth Annual Report prepared by the Board.

This year has been a pivotal year for DPD, marked by its first change in permanent leadership and its first audit by the King County Auditor’s Office. Anita Khandelwal was appointed by the executive in October and confirmed by the County Council on November 5, 2018. She begins the job with strong support from the Board and from DPD staff. Director Khandelwal’s experience within the Department, as Interim Director since July and in a leadership role since 2016, places her in a strong position to address the challenges raised in the recent [report](#) issued by the King County Auditor’s Office. Nevertheless, at the writing of this report, the Department is in major transition. This report covers a period when the Department was under the leadership of the former director and a period when the Department was in transition to new leadership. The ability of the Department to address recommendations made in last year’s report is not a reflection of the current new leadership, but rather affirms the need for change.

Still, despite the relentless change in everything from top leadership to physical space, DPD attorneys and staff have been providing high quality service for their clients. The judges interviewed for this report found DPD staff to be professional, competent, and well-trained as they represent those who stand accused in their courtrooms every day.

In preparing this report, the Board:

- Gathered information from members of the DPD Leadership Team;
- Met with the presiding judges of the Superior, District, Juvenile, and Seattle Municipal Courts (including the Involuntary Treatment Court) and the King County Prosecutor;
- Reviewed the [King County Department of Public Defense 2018 Annual Report](#) (hereinafter “Director’s 2018 Annual Report”) submitted by the former director

¹ This data was obtained from the King County Department of Public Defense 2018 Annual Report.

addressing the American Bar Association's Ten Principles for a Public Defense Delivery System;

- Reviewed the King County Auditor's report, [Public Defense: Weak Governance Hinders Improvement](#), October 15, 2018;
- Gathered information from DPD staff, their unions, and the Executive during the hiring process for the new director, and
- Gathered additional data regarding the Department's operations.

This Annual Report is shorter than the previous three reports produced by the Board because it will not describe the work of the Department in detail as it has in the past. That information and data can be found in the Director's 2018 Annual Report. This report will focus on the transition in leadership, the Department's compliance with the ABA's Ten Principles of a Public Defense Delivery System, comments from judges and the prosecutor, the King County Auditor's report, progress made on the 2017 Annual Report's recommendations, and the Department's role in furthering equity and social justice. The report ends with a series of recommendations for improving the quality of King County public defense and equity and social justice in the year ahead.

A YEAR OF TRANSITION AND NEW DIRECTION: LEADING FOR THE FUTURE

Pursuant to King County Code §2.60.026.D, the Director's appointment was set to expire at the end of 2018, coinciding with the King County Prosecutor's term. The County ordinance places the decision to reappoint the county public defender solely with the King County Executive, subject to approval by the County Council. *Id.* If the Executive determines not to reappoint the county public defender, the Executive must give notice to the Board 173 days before the expiration of the county public defender's term. K.C.C. §2.60.026.B.2. To comply with the ordinance, the Executive had to make the decision to reappoint Director Lorinda Youngcourt on or about July 1, 2018.

Although the ordinance does not specify a role for the Board in the reappointment process, the Board sought the opportunity to provide input to the Executive, particularly because this was the Executive's first opportunity to act under the ordinance to reappoint or not reappoint. The Board met with the Executive regarding his decision-making process and concurred with his plan to hire an independent investigator to evaluate the state of operations, communication, and climate under the leadership of the Director.

Meanwhile, SEIU Local 925, the union representing DPD staff, and the Teamsters Local 117, representing DPD supervisors, surveyed their members on whether they believed that the Director should be reappointed. The results opposed reappointment. The survey also revealed that the vast majority of attorneys and staff surveyed believed that the Public Defender could be a strong leader for public defense values and on broader issues such as race, equity, and social justice. The unions directed their findings to the Board as well as to the Executive.

After the Board received a briefing regarding the independent investigator's findings, the Board conveyed its recommendation to the Executive. On June 29, 2018, the Director tendered her resignation. Anita Khandelwal, the Deputy Director of Law and Policy, was appointed to serve as Interim Director.

The King County Code specifies a rigid timeline for recruiting and appointing a new county public defender once the decision to not reappoint has been made. K.C.C. §2.60.026. The Board's role, to recommend three unranked final candidates to the Executive, had to be completed by early October. Quickly following the resignation of Director Youngcourt, the Board began planning for recruiting and hiring, starting with an online survey of DPD staff and followed by in-person meetings seeking input on the qualities and skills that staff believed were most important for the Department's leader. Once the job announcement was completed, the county Human Resources Department (HRD) and the Board reached out nationally to seek the most qualified and diverse pool of applicants. With assistance from HRD, the Board designed an interview process that would permit union representatives and other DPD employee representatives to participate. On October 3, 2018, following a thorough process of screening and interviewing candidates and hearing from DPD employee representatives and others, the Board met with and submitted the names of three candidates to Executive Constantine for his consideration. Executive Constantine appointed Interim Director Anita Khandelwal as the Director of the Department of Public Defense, and the King County Council overwhelmingly approved her appointment on November 5, 2018.

A DEVELOPING LEADERSHIP STRUCTURE

Anita Khandelwal's appointment as Interim Director of the Department resulted in immediate staffing changes. She quickly put in place a leadership team which included an Interim Deputy Director, an Interim Civil Practice and Policy Director, an Interim Criminal Practice and Policy Director, an Interim Assistant Criminal Practice and Policy Director, and an Interim Juvenile and Young Adult Practice and Policy Director. These new interim directors joined the Quality and Resource Counsel, Director of Administrative Services, Chief Financial Officer, and the Assigned Counsel Director, who continue to serve under the Department's new leadership team. In addition, the Interim Director brought the former communications manager back to the Department as Public Affairs Specialist. The Director's current plan is to conduct an open process to fill the interim leadership positions following a strategic planning process that has recently begun. In early 2019, the Director also intends to hire a training coordinator and a permanent managing attorney for the SCRAP Division.

The Board supports the new Director's plan to undergo a strategic planning process prior to finalizing her leadership structure and team. The Board is hopeful that this process will not only address one of the key recommendations of the King County Auditor² (which will be discussed further in this report), but will assist the Director in building an effective and sustainable leadership team and structure.

Finally, the Board notes that the turnover in leadership in the Department over the past four years has been remarkable, even in light of what might be expected during the transition from the four non-profits to the County. In 2018, three of the four division managing attorneys have transitioned. Over the past four years, the SCRAP Division has had four different managing

² The report's Recommendation 1, with which DPD concurred states: "The Department of Public Defense should develop and apply a comprehensive strategic plan with goals, objectives, strategies, and activities that address quality and consistency for clients, and the effective use of county resources."

attorneys; ACA, ND and TDA Divisions have each had three different managing attorneys. The Director's Office has also been in almost constant flux. The Board looks forward to the new direction the Department will take under Director Khandelwal's leadership, and hopes it will bring the support, stability, and consistency that the staff and clients of DPD deserve.

QUALITY OF PUBLIC DEFENSE SERVICES

COMPLIANCE WITH ABA'S TEN PRINCIPLES

The American Bar Association's *Ten Principles of a Public Defense Delivery System* "were created as a practical guide for government officials, policymakers, and other parties" to use as "fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney." King County expressly adopted these principles in 2013 by including among the county public defender's duties responsibility for "[e]nsuring that the American Bar Association Ten Principles for [sic] a Public Defense Delivery System . . . guide the management of the department and development of department standards for legal defense representation. ..." KCC §2.60.026 (4). The King County public defender is required to file an annual report on the Department's efforts to comply with the Ten Principles, and she has done so in her 2018 Director's Report, dated April 1, 2018. That report describes a public defense delivery system in King County that is generally in compliance with the ABA's Ten Principles. The PDAB makes the following additional observations with respect to King County's compliance with the Ten Principles:

Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Board Comment: DPD has taken positions on criminal and juvenile policies, advocated for its budget, and made hiring decisions without interference by County officials. However, in July 2018, the issue of the Department's independence came to the forefront when then-Interim Director Anita Khandelwal joined a coalition of community groups in calling for a moratorium on building the new Children and Family Justice Center.³ The position was contrary to the one held by most members of the Council and by the Executive. Interim Director Khandelwal took this position on behalf of DPD after consulting with her leadership team and with juvenile practice experts on her staff – those who have extensive direct experience working with the children and families impacted by the new building. The Board believes Director Khandelwal was doing what an independent defender must do – speaking out on an issue relating to equity and social justice that affects the Department's clients – even when doing so goes against the position of other County officials.

There is no evidence the Executive or Council took any budgetary or other action against DPD or the Director as a consequence of DPD taking a public policy position with which they disagree. This episode serves to highlight the importance and challenge of protecting the independent role of the Public Defender. The King County Prosecuting Attorney is indisputably – and

³ *Opposition to King County youth jail grows as immigrant-rights group joins effort to halt construction*, Seattle Times, July 17, 2018.

appropriately – a prominent voice on a wide range of policy issues affecting the justice system. In taking these positions, he advances the priorities of his office and enhances its ability to achieve its objectives on a daily basis. Although not a separately elected official, the Director of the Department of Public Defense must have the ability to serve as an equally strong and clear voice on important issues that affect the Department’s clients and their communities.

Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Board Comment: Principle 2 addresses the need for a coordinated plan for the active participation of the private bar where caseloads are sufficiently high, as is the case in King County. The assigned counsel panel in King County handles cases when conflicts of interest prevent the divisions from representing the client or when DPD attorneys are at capacity and additional assignments would violate caseload standards. Comments from judges interviewed for this report suggest that the quality of representation by the assigned counsel panel is generally consistent with that provided by DPD staff attorneys. According to data reported in the Director’s 2018 Annual Report, DPD made progress in 2017 in reducing the number of felonies that went to assigned counsel due to capacity issues. The Board commends this progress, as it believes that efficiency improves when assignments to the panel based on capacity issues are kept to a minimum.

In our 2017 Annual Report, we found the County did not comply with Principle 2 because it failed to adequately fund the assigned counsel panel. The recently adopted 2019-2020 County budget provides for a much needed and long neglected increase in the rates paid to assigned counsel. The Board still has concerns about the size and apportionment of the increases, as well as the source for funding those increases.

Principle 3: Clients are screened for eligibility and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.

Board Comment: New procedures adopted this past year and that became effective in January 2017 added telephone financial screening to in-person screening of applicants for appointed counsel. This enhancement provides a more efficient, expedited process, but the quality of the process and the extent to which it has shortened the time between arrest, assignment of counsel, and a face-to-face meeting between attorney and client remain to be assessed. Nevertheless, this is a positive development in achieving greater compliance with Principle 3.

Principle 4: Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Board Comment: Department policy requires counsel to meet with clients within 24 hours of their detention and well before any court appearances. Private meeting space is available at jails and courthouses where defense counsel, paralegals, investigators, and mitigation specialists can meet with clients in confidential settings – but there is a critical exception.

There is a structural issue in first appearance calendars which are held under time constraints which do not allow for critical stage adequate client consultation and advice. Currently, court time allocation for these calendars do not take into account the changes in competent preparation and advice constitutionally required. Washington Appellate Courts have recently addressed the 6th Amendment failure of such inadequately investigated and advised pleas. See *In Re PRP of Burlingame*, Washington Court of Appeals Slip Opinion filed May 17, 2018. Current first appearance calendar practices in King County have also been challenged on the same 6th Amendment deficiencies. In addition to the structural problem, there is a facilities problem as well.

The King County Jail Courtrooms, where in-custody arraignments and initial appearances take place, have limited space to allow for confidential meetings between DPD attorneys and their clients. At King County Jail Court Two (“KCJ 2”), where Seattle Municipal Court in-custody arraignments are held, calendars are created the morning of arraignment. DPD attorneys meet in a hallway, where jail staff are within hearing distance and other attorneys are also meeting with clients. It is not private or confidential.⁴ These meetings take place right before arraignments and initial appearances – where judges make critical pre-trial release decisions. The decision to set bail or release a defendant pre-trial will have a significant influence over the outcome.⁵ Not providing adequate time or space for misdemeanor attorneys to meet with their clients at a critical stage in the proceedings demonstrates that, at least with respect to Seattle Municipal Court cases, Principal 2 is not being met.

In addition, a significant concern highlighted by the 2018 Director’s Report indicates that there is inadequate space in the Kent DPD offices, in particular for NDD attorneys who do not have adequate client meeting space. This issue is apparently on the road to resolution, now that the County Council authorized budget approval in late August to lease and build out space in the Kent Valley Professional Center. Renovations are expected to be completed in the first quarter of 2019. The new space will provide office space for NDD attorneys, support staff, and supervisors, client meeting space, and a conference room with Skype capabilities for remote meeting and training requirements.

There continues to be little office space at the Involuntary Treatment Court for attorneys and staff; however, video hearings have resulted in less need for attorneys to be at the court. ITA attorneys have roving office space at the various hospitals where they practice. While not perfect, there is generally space to speak confidentially with clients in the various hospital units.

Principle 5: Defense counsel’s workload is controlled to permit the rendering of quality representation.

⁴ In King County Jail Courtroom One (“KCJ1”) DPD worked with the jail, the prosecutor’s office, and the court to make improvements to the process to allow attorneys adequate space and time to meet with their clients before hearings..

⁵ A recent study in Harris County, Texas, found that misdemeanor defendants detained pre-trial are 25 percent more likely than similarly situated releasees to plead guilty, are 43 percent more likely to be sentenced to jail, and receive jail sentences that are more than twice as long. Paul Heaton, Sandra Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pre-trial Detention*, 69 Stanford L. Rev. 711 (2017).

Board Comment: DPD has been complying with the State Supreme Court-mandated caseload standards through a staffing model that was developed early on by a task force led by the Director of the County's Office of Performance, Strategy, and Budget and that included representatives of the Department and the PDAB. The Board believes that applying this staffing model and the supplemental credit system have resulted in compliance with Principle 5. However, after a number of years of applying the model, it is also clear that adjustments to that staffing model may be required, particularly in light of the changing workload created by huge amounts of video discovery produced through body-worn cameras. This increased discovery impacts attorneys, investigators, mitigation specialists, and administrative staff. Also comments from judges highlighted that there may be a lack of investigative and mitigation resources for defenders. Finally, as will be discussed further in the section on the King County Auditor's report, DPD should proceed carefully as it responds to recommendations regarding supplemental credits, those credits that attorneys receive when they spend additional time on complex cases. Supplemental credits have been important in recognizing that the caseload standards are not perfect and that quality representation requires flexibility.

Principle 6: Defense Counsel's ability, training, and experience match the complexity of the case.

Board Comment: As far as matching ability and experience to the complexity of case assignments, the same Washington Supreme Court standards that set numerical limits on the number of cases that attorneys can accept also established experience requirements. For example, in addition to certifying compliance with the basic professional qualifications in Standard 14.1 of the Washington Supreme Court Standards (e.g., familiarity with Washington Rules of Professional Conduct and completing seven CLE hours each year in courses related to public defense practice), an attorney representing a defendant accused of a Class A felony must also certify that he/she meets the experience requirements set forth in Standard 14.2 (e.g., two years as a public defender and trial counsel in three jury trials). Managing attorneys in each of the four divisions are responsible for ensuring that attorneys' experience and skill levels are appropriate to their case assignments.

With respect to training, the 2018 Director's Report provides details of a robust training program. However, concerns about the DPD training program under the former director's leadership led to significant changes being made by the Interim and now Director Khandelwal. Since her tenure as Interim Director, significant changes have been made to the training program, in particular how it is staffed. A list of trainings provided to the Board for the purposes of this report demonstrates that there continues to be a robust training program with numerous in-house trainings provided to attorneys and staff

Principle 7: The same attorney continuously represents the client until the completion of the case.

Board Comment: DPD attorneys are assigned to represent each client at all stages of his/her case through trial with the exception of the initial appearance (e.g., arraignment calendar) at which a calendar lawyer may represent the client.

Principle 8: 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.

Board Comment: Parity with the prosecution was an issue that became integral while negotiating the most recent collective bargaining agreement signed by SEIU and the County in March 2018. Salary parity has largely been reached between similar job classifications; however, the question of whether parity requires DPD to have a similar structure, e.g., the same number of senior attorney slots as the prosecutor’s office, continues to be debated, as does the question of how to reach parity for defense investigators either in number or salary, where there is not a comparable position within the prosecutor’s office. The Board began a preliminary investigation, without resolution, into what “parity” means under Principle 8.

With respect to being an “equal partner” in the justice system, the Director as well as other DPD staff participate regularly in criminal justice initiatives and reform efforts. When interviewed by the Board, the King County Prosecutor emphasized his desire to further partner and collaborate with DPD on systemic reforms.

Principle 9: Defense counsel is provided with and required to attend continuing legal education.

Board Comment: Professional training is a high priority for the Department, and substantial resources, both human and financial, are devoted to providing opportunities for attorneys and non-attorney staff alike. Many in-house CLEs took place in 2017, as documented in the 2018 Director’s Report. Training was also a priority for the Interim and now Director Khandelwal, who has encouraged higher utilization of in-house expertise.

Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Board Comment: DPDs collective bargaining agreements, as well as the Washington State Bar Association Standards, set forth a requirement that each agency providing public defense services provide one full-time supervisor for every 10 staff lawyers.

DPD developed an evaluation tool for attorneys in 2016; however, negative feedback from staff and unions led DPD to abandon the tool. The new Director has stated a goal of creating a new tool in 2019. Reviewing for “quality and efficiency according to nationally and locally adopted standards” as required by this principle is challenging, but not impossible.⁶ As identified in the King County Auditor’s Report, DPD lacks sufficient measurements to ensure the quality of its work. The Board will discuss the Auditor’s Report and recommendations in a separate section below.

⁶ The Washington State Bar Association’s Council on Public Defense has developed performance guidelines to supplement the State indigent defense caseload standards. In 2011, the WSBA adopted the “Performance Guidelines for Criminal Defense Representation” and in November 2017, the [“Performance Guidelines for Juvenile Offense Representation”](#). The WSBA is currently working on standards for other indigent defense practice areas.

COMMENTS BY JUDGES AND PROSECUTORS

To obtain additional information about the quality of representation and whether DPD is in compliance with the Ten Principles, the Board met with the presiding and chief criminal judges in each of the courts in which King County public defenders practice – King County Superior Court (Seattle, Regional Justice Center, Juvenile Court, Involuntary Treatment Court), King County District Court, and Seattle Municipal Court. In addition, the Board met with the King County Prosecuting Attorney.

The comments we received from judges regarding DPD attorneys' litigation skills, professionalism, and preparedness were overwhelmingly positive.

- DPD attorneys were generally described as “first rate” and “well trained.”
- Judges reported that they were “impressed” and “very pleased” with the quality of public defense.

There were a few areas of concerns raised by judges:

- Mitigation and investigative resources: From the perspective of the bench there are delays and continuances sought to continue pursuing expert or other evidence to support mitigation. It is unclear to the bench whether this is a resource issue or a lack of discipline on the part of the State and the defense.
- Investigator resources: Judges observed more continuances are being requested to get witness interviews completed and more investigative resources may be needed.
- Inconsistency amongst divisions: Judges did not report that practice skills differed amongst DPD divisions; they find high-quality representation across divisions. However, judges noted that certain divisions had different approaches to cases. For example, one judge noted that divisions practicing in the same court had noticeably different trial rates. Interestingly, judges disagreed on whether inconsistency amongst divisions in their approach was a positive or negative. One suggested that a move toward a more monolithic approach to clients and cases was the trend and not one that the judge thought was necessarily positive for clients or the system.
- In Superior Court, it was estimated that out-of-custody defendants fail to appear for scheduled court hearings about 50 percent of the time, resulting in issuance of FTA warrants. There is also a high FTA incidence for defendants assigned to the Community Center for Alternative Programs (“CCAP”). The Court proposed a text message reminder program whereby the Court would text defendants to remind them of court hearings. DPD attorneys advise their clients on a case-by-case basis on the risks and benefits of participating in the program. DPD is also engaged in contracting with a vendor to provide text message reminders to clients that are protected by attorney-client privilege.
- District Court initiated a Community Court program for defendants charged with misdemeanors. The first court was established in Redmond. After a needs assessment, a services/treatment program is recommended. If the defendant successfully completes the program within six months, the charges are dismissed. The Community Court meets weekly and provides access to representatives of about 15 service providers, who are available not only to participating defendants but also to community members. District Court plans three additional courts in other parts of the King County. While DPD prefers

pre-filing diversion programs, DPD is using existing resources to staff Redmond Community Court. DPD has also expressed willingness to staff a community court in Burien.

WORKFORCE

BASIC STAFFING INFORMATION

According to data provided to the Board by DPD, as of the writing of this report DPD has 395 career service and exempt staff. The Department is budgeted through all sources for 401.8 FTEs. Approximately 22.3 percent of the attorneys identify as other than white, as do 32.7 percent of the para-professionals and 49 percent of the administrative employees. Fifty-four percent of the attorneys identify as women, as do 68.4 percent of the para-professionals and 73.1 percent of the administrative employees.

The Director's Office has 51 employees: 45.1 percent of those employees identify as other than white and 72.5 percent as women.

The Department committed itself to performing extensive and effective outreach to achieve diversity of the 2018 summer legal intern class. Of the 17 summer intern hires, 10 identified as white.

COLLECTIVE BARGAINING AGREEMENT

Agreements between DPD and its supervisors and between DPD and its line staff were reached in March 2018. It was a lengthy and challenging process for all involved, which revealed deep morale issues within the Department and deep dissatisfaction amongst organized labor with the Director's Office. During negotiations, union representatives attended one of PDAB's meetings to express concerns regarding the negotiating process and the overall morale in the Department. This gave the Board another opportunity to wrestle with its role as a voluntary advisory board. The consensus was that the Board should not intervene in ongoing labor negotiations; however, the information that the Board received from union representatives was valuable, particularly in understanding what DPD employees needed from leadership.

As discussed above under the comments on ABA Principle 8, progress has been made through the collective bargaining process toward achieving salary parity with the prosecutor's office amongst similar job classifications. However, the issue of what "parity" means under Principle 8 is still a point of contention. The jobs of the prosecutor and defender are fundamentally different and, hence, the structures of their respective offices differ in terms of staffing ratios, supervision, etc. Investigative resources are difficult to compare, since prosecutors rely on the expansive resources of law enforcement. These are issues that will not be easily resolved, but efforts should be made to do so prior to the next round of labor negotiations.

KING COUNTY AUDITOR'S REPORT

In 2018, the King County Auditor's Office conducted an audit of DPD, its first of the new Department. The Auditor's Office met with the Board before commencing the audit and discussed focus areas for exploration. The Auditor's Office kept the Board updated throughout the process and shared a draft of its findings before they were finally released publicly on October 15, 2018. The report is thorough and detailed and highlights a number of issues regarding the work, the structure, and the staffing of DPD. The report made a number of recommendations, including the need for a strategic plan; the need for a new case management system, particularly one that allows DPD to better track the work of DPD staff and that allows for increased sharing of data between the divisions and the Director's Office; the need for new or updated standards regarding case management, expectations of employees, and the staffing model; and the need to design an efficient organizational structure that aligns with its goals. The Auditor's report focuses on some of the issues that have limited DPD, particularly those regarding a case management system and data sharing. A case management system that allows for more efficient and, therefore, more accurate time data entry and also allows for increased data sharing would enable DPD to more accurately determine staffing needs and provide more reliable information to evaluate employee performance. DPD has already begun working with KCIT to address these issues and obtain a new case management system.

DPD's response to the Auditor's report indicated that DPD management either concurred or partially concurred with all of the Auditor's recommendations. The response also noted the status or the plan in regard to each recommendation. Obviously, some of the recommendations are more challenging to implement than others. The Board provides these comments on the Auditor's report ("the Report").

BUDGET AND STAFFING

The Report details the increased budget for DPD since it has transitioned into a County department. Certainly, the Report is correct in highlighting the budget issues: the increase is significant. The Report notes that much of the increase flows from the staff salaries moving closer to parity with the King County Prosecutor's Office salaries. The Report also states there is no clear indication of what the County has received in exchange for the increased funding, noting that there has been no commensurate increase in the number of cases DPD attorneys handle nor is there an identifiable increase in the quality of the services.

The Report's observation about budget increases is correct, but we view the issue through a different lens. We believe the budget increases reflect the persistent underfunding of public defense under the non-profit agencies. When the agencies provided public defense, the County was receiving quality public defense representation at, essentially, below-market rates since the staff at the agencies were being paid less than their counterparts at the prosecutor's office. In light of the underfunding of public defense under the previous structure and the Auditor's acknowledgement that much of the increase in the budget is the result of parity, questioning whether there is an increase in services commensurate with the increase in the budget creates a false comparison.

The Report uses the 2013 budget as the comparison for the current budget, which was essentially the budget that was in place in the last year of the prior public defense structure. The Report then uses the 2013 budget as its baseline budget to evaluate DPD. Given the lack of parity at the time, that budget should not be used as a baseline. It seems that going forward, the current budget provides a more accurate baseline.

The Report also discusses the use and impact of supplemental credits. The Report is correct that DPD was lacking standards or guidelines regarding the supplemental credits, but DPD now has that guidance in place. The new guidance states that attorneys should generally earn between 11 and 16 supplemental credits per quarter; credits in excess of that number must be approved by the Managing Attorney. A supplemental credit is earned for 13.3 hours spent on a case beyond the initial 12.1 hours. Those guidelines are a step in the right direction, but more detailed guidelines would require data that clarify the circumstances in which the credits are being earned, e.g., the charges, the number of counts, the length of the potential sentence, the client's criminal history, and a jury trial versus a plea. The Board recommends that DPD attempt to compile that data to better evaluate the use of the credits and develop a more detailed guideline regarding the credits. The evaluation of the credits should also include an examination of the current supplemental credit thresholds to determine if those thresholds are set at the appropriate level and if those thresholds best serve the needs of the clients, the attorneys, and DPD.

The Report also notes that DPD should have standards for case efficiency, i.e., standards on the appropriate use of case time. It is not clear from the Report what these standards would look like and how they would be applied. DPD's response to the Report details some of the issues that would arise from these guidelines. DPD makes a strong argument that use of guidelines as suggested by the Auditor would violate Rule 5.4(c) of the Rules of Professional Conduct, which prohibits a lawyer from allowing a third party to direct or regulate the lawyer's professional judgment in rendering legal services.

There are other issues with developing metrics for case efficiency. It is not clear how these guidelines would be set, since, as the DPD response also notes, some seemingly simple cases may require extensive time and cases that appear very complex can be resolved relatively quickly. Additionally, that guidance could be easily misinterpreted by clients as a limit and not a guidance. It would be disconcerting for a client to learn that their attorney was expected to spend a limited amount of time on their case.

That said, supervisors should be mindful of cases in which an attorney is spending significant time and, if appropriate, discuss with the attorney the reasons for that and whether certain avenues or approaches would be productive in the case.

The Report also addresses the interplay of supplemental credits and the staffing model. The Report makes distinctions between case assignment credits and supplemental credits. Case assignment credits represent future work, and supplemental credits represent past work; however, both are equally representative of an attorney's work.

The Report states, on page 6: "Because supplemental credits can reduce caseload, depending on the type of case, Department of Public Defense attorneys have workloads that are lower than the

case maximums set by the Washington State Bar Association.” This implies that an attorney should generally be at or near the case maximums at all times. The Board disagrees that the maximum caseload standard should be viewed as a target to maintain, or as a floor. Rather, the Board asserts that the caseload standards were created to act as a ceiling or cap to ensure that attorneys representing indigent clients meet minimal ethical and constitutional requirements.

Practically, it is not possible for attorneys to be at maximum caseload on a consistent basis. The Report assumes that cases are received by DPD on a consistent and predictable basis. The number of cases received each month by DPD can vary widely. It is essential that each unit have the flexibility to adjust to an influx of cases and have the capacity to accept those cases, particularly at the end of a month. There would be little or no flexibility if attorney caseloads were consistently at or near the caseload limit. Not only do the number of cases vary, but so do the type of cases. A large number of more serious cases, i.e., class A felonies, can be received at the end of the month. Only attorneys with a certain experience level can handle those types of cases. If they are at the caseload limit, the unit will not be able to accept the cases, and complex and costly class A felonies will need to be assigned to outside counsel.

CASE MANAGEMENT AND OUTCOMES

The Auditor’s Report addresses the issue of the metrics to determine the quality of the service, from both an objective standpoint and in relation to the funding. The Report asserts that metrics are necessary to determine if DPD is meeting its goals and how DPD can better achieve its objectives. However, in the context of public defense, the question of the appropriate metrics is a challenging one. There are nuances and complexities in public defense that make accurate measurement of quality and efficiency particularly difficult. While reliable data are essential for decision-making, the value of numerical data in the context of public defense is more limited than it might be in other arenas.

In discussing the need for metrics, the Auditor’s Report on page 13 references two reports. The first is from the International Legal Foundation, entitled *Practice Principles and Key Activities, Measures, and Outcomes* (ILF Report). The ILF Report examines three areas: 1) whether quality representation matters; 2) what are the indicators of quality representation; and 3) how quality representation is measured. In regard to the last topic, the ILF Report considered a number of different measures, including output measures, e.g., how many briefs did the attorney file and how many motions for release has the attorney made; outcome measures, e.g., how many trials has the attorney won; and finally, perceptual outcomes, e.g., was the client satisfied with the representation and the outcome. The ILF Report does not conclude that numerical measures are the only or the most effective method of measuring the quality of indigent representation.

The second report referenced by the audit is the National Legal Aid and Defender Association’s *National Indicators of Quality Indigent Defense* (NLADA Report). This report draws largely from the ILF Report and seeks to refine it. As the title indicates, this report focused on the indicators of quality public defense and less on the methods or approach used to determine if those indicators are present. Interestingly, the report states in the introduction, after noting the lack of a national consensus regarding quality indigent defense:

For researchers, having no nationally agreed upon definition of quality indigent

defense services, much less a consensus method to assess quality, frustrated efforts to prioritize and undertake research projects to improve indigent defense.

...

For practitioners, having no nationally agreed upon definition of quality indigent defense services complicated their ability to clearly explain to funders what work is essential for defender programs to undertake in order to deliver quality services, meet minimal constitutional and ethical obligations, and contribute to a more fair and effective criminal justice system. Furthermore, it limited the ability to conduct meaningful performance assessments to monitor and improve services provided.

NLADA Report, P. 5.

Numeric measures have a role in evaluating the work of the attorneys; however, they are limited in that they best serve to set a baseline but are not as valuable in gauging work that is above that baseline. There are a wide variety of useful numerical measures, including how often an attorney files a brief in her or his cases, how frequently an attorney goes to trial, how promptly or frequently an attorney visits the client, or the number of experts retained.

The numerical measures can show who is meeting the minimum requirements. Beyond that, the measures may shed some light on the quality of an attorney's work, but a more substantive examination of the work is necessary in order to properly evaluate the work. In order to make those more nuanced determinations, it would be necessary to review the briefs and evaluate the quality first hand. This is essentially one of the proposals of the ILF Report, which states on page 24, apparently quoting from Pamela Metzger and Andrew Guthrie Ferguson, *Defending Data*, 88 S. Cal. L. Rev. 1057, 1110 (2015): "Qualitative data – which 'describe the essential qualities or experience of a phenomenon' and whose 'sources may include interviews, observations, and documents' – is critically important as a complement to hard numbers."

The metrics discussed in the audit and in the above referenced reports will not provide all of the information necessary to properly evaluate the attorneys and staff, but it does provide some guidance. The Board recommends that DPD identify the numerical measures that would be most informative and begin collecting that data. The Board also recommends that DPD continue to develop a more robust evaluation process that is consistent across all divisions and that examines the work of the attorneys and staff in a more in-depth manner. That should include observations of the attorneys in court, obtaining feedback from others in the criminal justice system, including the judges and opposing counsel, and reviewing the attorneys' written work. DPD should also consider obtaining input from the client and how best to obtain and utilize that information.

The Report also addresses a disparity in trial rates and outcomes among the four Seattle felony units. The data are interesting, but it is difficult to draw any conclusions regarding that data without more information. It is not clear from the Report if the division with the higher trial rate is the same division with the higher positive outcome rates. The Report notes that the two divisions with the highest rates are not necessarily the same. Clearly, DPD should examine this data more closely to determine what conclusions, if any, can be drawn.

ORGANIZATIONAL STRUCTURE

Finally, the Report recommends that DPD reconsider its organizational structure. It recommends a structure that more closely aligns with the Department's goals. The Auditor focuses on the perceived inefficiencies of the existing four division structure. The Report contends that a primary unit and two to three smaller units would increase overall consistency and decrease the number of cases that would need to be sent to assigned counsel.

DPD addressed this issue in its response and made a number of valid points. The response stated that the data and certain assumptions regarding conflicts were flawed. As a result, DPD argued that the Report's conclusions in that regard were not reliable.

Additionally, the Report was not clear how the revised structure would reduce the number of conflicts, and therefore reduce the number of cases sent to assigned counsel, particularly since the primary division would accumulate an ever-growing database of potential conflicts. DPD's response also highlights a very practical issue: the smaller divisions, with the resulting smaller practice area units, would not be able to function properly. Many practice area units, particularly the felony units, need a minimum number of attorneys to function efficiently. There needs to be a sufficient number of attorneys to provide coverage when an attorney is out of the office or in trial. As the DPD response notes, that might not be possible with the smaller units. This is not to say that the current structure is optimal; it does appear, however, to be preferable to the proposed alternatives. DPD notes that a structural change was considered at length by the Office of Performance, Strategy, and Budget and rejected. Certainly, that does not rule out any structural change in the future, but at this point the disadvantages of the proposed change outweigh the advantages.

In order to properly evaluate the appropriateness of a structural change, the Board recommends that DPD prepare a report on various structural options that details the advantages and disadvantages of each option. DPD's report should be supported by robust data.

EQUITY AND SOCIAL JUSTICE

The report on the state of county public defense shall include an assessment of the progress of the county in promoting equity and social justice related to the criminal justice system and may include recommendations for advancing equity and social justice.

As stated previously, the work of the Department is at its core equity and social justice work. DPD staff advance equity and social justice every day as they protect the rights of indigent defendants and press for meaningful solutions to the challenges that poor clients face in systems that are set up to process and jail them, not to address the root causes of their behaviors.

Yet, much more must be done to achieve equity and social justice in the criminal, juvenile, dependency, and involuntary civil commitment legal systems. These systems continue to punish, surveil, and incarcerate people who are poor, people who are mentally ill, and people of color at dramatically disparate rates.

DPD staff, often alongside other community members and system stakeholders, advocated for meaningful system changes. Some highlights include:

- **Procedural fairness for youth:** The Seattle Police Department joined the King County Sheriff's Office in adopting new simplified juvenile Miranda warnings, which were developed by DPD staff and take into account the developmental differences between youth and adults.
- **Reducing unlawful jail time:** DPD attorneys challenged the practice by Seattle Municipal Court judges of incarcerating defendants for an additional day when they exercise their right to disqualify a judge. The Court of Appeals, Division One agreed that the practice violates the law. *Khandewal v. Seattle Municipal Court*.
- **De-carcerating youth:**
 - DPD participated in the Executive's effort to reach the goal of zero youth detention and shift the juvenile justice system to a public health approach through developing the Zero Youth Detention Roadmap.
 - DPD also joined a broad-based coalition to seek a pause to the construction of the \$240 million Children and Family Justice Center (the new juvenile court and youth jail). Although the project continues unabated, DPD stood with their clients' communities to raise awareness around the harms caused by jailing children.
 - DPD reached out to State Attorney General Bob Ferguson and Ross Hunter, the Secretary of the state's Department of Children, Youth and Families, calling for an end to the practice of arresting dependent children who run away from their court-ordered placements. The Executive also supports this position and is collaborating with DPD to advocate for an end to this practice.
- **Mitigating the long-term consequences of convictions:** DPD incorporated into their work three civil attorneys addressing housing, benefits, employment, and other legal issues that are exacerbated when poor people are caught in the criminal legal system. (An assessment of this City of Seattle-funded project representing over 800 clients was attached to the 2018 Director's Report.) Although the County did not fund these positions in the 2019-2020 budget, the County did fund a new post-conviction unit. Through combining available resources, DPD has committed to continuing this important work.
- **Shifting resources to reflect community values:** In King County, a large percentage of the general fund goes to funding the criminal legal system. Shifting resources from prosecuting and incarcerating to upstream solutions that can increase public safety is a challenge. DPD has participated in County initiatives to look for better solutions, including one promising pilot project – the Vital Program – which provides comprehensive support to frequent utilizers of the King County jail. This work was highlighted in Director Khandelwal's op-ed on November 16, 2018, in the Seattle Times, [Combat Seattle's street crime with treatment and housing, not jail](#).

DPD also joined community efforts targeting the City of Seattle's budget – supporting Budget for Justice, a coalition comprised of several community organizations in Seattle, and part of a national effort to end mass incarceration and create safer and healthier communities through the creation of a comprehensive “justice reinvestment” initiative. The coalition wants to see the city reduce the amount of money slated for probation and jail contracts and reinvest those funds in effective community-based services and programs. Although the coalition's efforts were largely unsuccessful in shifting the City of Seattle's recent budget, it took an important step in highlighting the need to shift resources away from the expensive and ineffective use of incarceration.

- **Protecting our immigrant community members:** The King County Council passed two significant ordinances that ensure that County resources will not be used to facilitate immigration detention and deportation. The first, which DPD advocated for alongside a broad community coalition, impacts DPD clients and requires a federal judicial warrant before the King County Jail complies with requests from Immigration and Customs Enforcement (ICE) to hold inmates and release them to ICE. The second prevents the use of County funds and resources on federal immigration enforcement and outlines the steps the County will use to protect immigrants and refugees who seek services from the County or are victims/witnesses of crime, while still adhering to federal law.

RECOMMENDATIONS

THE DEPARTMENT'S PROGRESS IN ADDRESSING THE BOARD'S 2017 RECOMMENDATIONS

1. The Executive and Council should increase the rates paid to members of the Assigned Counsel Panel as recommended in this and prior Advisory Board Annual Reports. Providing fair compensation to all public defense attorneys relied upon to provide counsel to indigent clients is required by Principle 2 of the ABA's Ten Principles for Public Defense Delivery Systems and is fundamental to assuring equity and social justice within the criminal justice system.

Board Comment: For the first time since 2004, hourly rates to compensate the Assigned Counsel Panel were raised in the 2019-2020 King County Budget. While the rate increases appear substantial, the rates have been stagnant for almost 15 years and the new rates still fall below what the Board believes is appropriate to meet the County's obligation to equity and social justice. There are three major concerns that the Board continues to have regarding assigned counsel rates: (1) The rate increases will be funded by the State Public Defense Improvement Grant, not the general fund; (2) some of the rates inappropriately value types of cases differently based on the class of offense or type of proceeding; and (3) in some instances, the rates are still too low to adequately fund quality indigent defense in King County.

2. The Executive must improve the process for filling vacancies on the Advisory Board. Made up entirely of volunteers, the Board has not been at full capacity for more than a

year because of delays in filing the position reserved for a representative of an organization focusing on veterans concerns.

Board Comment: In January 2018, Adam Chromy was appointed to the Board to fill the vacancy left by Leo Flor in 2016. He fills the role on the Board of representing a “nonpartisan organization that focuses on issues that involve military veterans.” K.C.C. §2.60.31.D.8. Unfortunately, the time it took for the Executive to identify and nominate Mr. Chromy was unacceptable. Similarly, the Executive took over a year to identify and nominate board member Safia Ahmed when a previous appointee resigned. These delays highlight a challenge created by the ordinance, which may need updating. The ordinance requires members to be appointed as representatives of 11 specific constituencies – a laudable effort to constitute a diverse advisory board. In practice, however, these designated roles have been difficult to adhere to and may not be working as intended. It should be noted that the Executive acted expeditiously to fill the recent board vacancy created by the departure of Thomas Hillier. Louis Frantz, a former DPD attorney, began serving in September, representing the Washington Association of Criminal Defense Lawyers.

3. The Department should develop a strategic vision and plan for the Department that is informed by three years’ experience and thorough consultation with the Board, Department attorneys, and staff. It should produce a full set of operational policies designed to achieve the priorities established in the strategic plan. It should design a revised leadership structure to implement the vision and strategic plan. Part of this restructuring should include creating and/or revising job descriptions, including clarifying the descriptions and authority of the Case Area Coordinator positions if they are to continue.

Board Comment: The former Director implemented a strategic planning process, using outside consultants to work with Department leadership and staff to develop a strategic mission and vision. The Board was consulted during this process as it moved forward, and Board members expressed concerns regarding the adequacy of the process and the lack of specificity and concrete goals. A meaningful strategic plan did not emerge, a critical finding in the Auditor’s Report.

The new Director is currently undertaking a strategic planning process, utilizing resources within the County. The Board has been advised that this process will also be used to develop a leadership structure and produce operational policies that will move the Department forward on addressing the governance issues identified by the Auditor’s Report.

4. The Department should gather the necessary information to determine how best to manage the workloads of non-attorney staff, whose assignments are not subject to external standards.

Board Comment: The Department continues to work on gathering the necessary information, but its ability to gather reliable data from employees continues to be an

issue. The new Director is working with non-attorney staff to enter their time into the case management system and is also working on acquiring a new case management system that will be more user friendly.

5. The Department should establish a schedule for the creation of practice manuals, including practice manuals for felony and misdemeanor practice, drawing on the expertise within the divisions for collecting and distributing this valuable practice-based knowledge.

Board Comment: In January 2018, DPD made available a “Felony Resource Compilation” to all divisions. It took a considerable time to develop, in part due to efforts to gather as much input from experts in all divisions. A misdemeanor practice manual has been drafted, but still needs additional work before it will be available to staff. Manuals for juvenile and civil practice areas are in process. DPD leadership reports that this body of work is important and will be considered within the strategic planning process currently taking place under the leadership of the new Director.

The lack of training or practice manuals was also identified by the Auditor’s Report as an area of concern. Although the Board does not necessarily agree with the Auditor’s emphasis on disparate trial rates and trial outcomes among divisions as a metric, the Board does believe that developing and making consistent training and practice resources available is a critical step toward ensuring that quality representation is consistent across divisions.

6. Create a plan for outreach to law school deans and directors of prominent clinical programs to assist the Department in recruiting an excellent and diverse class of interns and new public defenders. The Department should investigate the possibility of obtaining stipends to assist interns who need such support in order to find housing in Seattle’s inflationary market.

Board Comment: DPD made progress on recruiting a talented and diverse class of interns and new public defenders from local and top national schools. DPD also secured funding in its 2019-2020 budget to pay stipends to legal interns, which will begin with the intern class of 2019.

7. The Department should investigate methods for obtaining client feedback that may assist the Department in meeting its objectives.

Board Comment: DPD has not made progress on obtaining client feedback, largely because it requires resources that have not yet been identified. The Board believes that this is critical, particularly in light of the Auditor’s Report highlighting the need for DPD to develop “reliable measures” of its work. DPD staff help poor people navigate complex legal systems which are often unjust. Measuring the quality of representation in the various legal systems DPD clients are caught in cannot be done solely through objective data. It will require asking DPD clients about their experience with their defenders and their support staff.

8. The Department should continue to collaborate with judges and court administrators to develop practices that more efficiently utilize court and attorney time in the scheduling of readiness hearings and training programs.

Board Comment: This recommendation stemmed largely from the annual mandatory all staff training developed and implemented by the former Training Director. The unavailability of counsel created issues for the courts. The Interim Director changed the format, making the annual training one day, instead of two, and voluntary. The training was well attended and created fewer problems for the court.

9. Training programs for investigators and mitigation specialists should be expanded, made more robust, and made challenging enough for all levels so that all members of the defense team have the opportunity for growth through departmental training programs.

Board Comment: Information provided by DPD demonstrates that the focus on training since Director Khandelwal became the interim in July shifted to utilizing and encouraging the use of in-house expertise. This resulted in a number of trainings accessible to attorney and non-attorney staff. Training was made available to mitigation and investigators specifically. Examples include “Writing Compelling and Persuasive Reports for Social Workers and Mitigation Specialists on the Defense Team” and “Practical Tips for Interviewing and Cross-Examining Child Witnesses.” Another positive step for expanding training to non-attorney staff came in November and December 2018 – “Public Defense 101” – a 90-minute training for administrative staff about the “nuts and bolts” of public defense.

PROGRESS IN ADDRESSING THE BOARD’S 2017 EQUITY AND SOCIAL JUSTICE RECOMMENDATIONS

1. **Addressing the Needs of People Struggling with Mental Illness:** The County must rethink and overhaul the way that the involuntary commitment process is utilized in order to meet the needs of King County residents who struggle with mentally illness. The involuntary commitment process is an expensive and ineffective way to address the significant public mental health crisis the County and state faces. Effective mental health services must be made available to community members earlier and on a more consistent basis.

Board Comment: Little progress has been made on this critical problem. DPD participates in monthly meetings with stakeholders where there is active dialogue on how mentally ill members of our community can be better served; however, this has not translated into any concrete action. DPD should leverage its experience working with clients with mental illness, engage with stakeholders and community groups and pursue solutions to address the mental health crisis.

2. **Protecting Immigrant Communities:** The County should take steps to ensure that community safety is a priority in immigrant communities and that King County resources are not spent on civil immigration enforcement to the extent permitted by law. In

addition, the County should increase resources to expand defenders' abilities to counsel clients on the immigration consequences of their convictions.

Board Comment: As discussed above, the King County Council passed two significant ordinances that ensure that County resources will not be used to facilitate immigration detention and deportation.

3. **Pre-Trial Detention:** The County should work to reduce pre-trial detention through reforming bail practices and adequately resourcing alternatives to detention, such as work release. Individuals accused of misdemeanors who are not released on their own personal recognizance in District and Municipal Courts should be permitted to post unsecured bonds, which allows them to avoid the financial burden imposed by private bond companies.

Board Comment: Despite many discussions at the local and state level on bail reform, no meaningful progress has been made on reducing the number of pre-trial detainees in King County who are there because they are too poor to post bail. According to [data](#) released by the Department of Juvenile and Adult Detention ("DAJD"), over 3,000 adults are booked into King County Jails every month – a number that has remained basically unchanged between 2017 and 2018. A third of those adults are booked for misdemeanors. On an average day, 1,300 adults are detained in King County Jails pretrial on felonies and 200 on misdemeanors.

On August 1, 2018, Director Khandelwal sent a letter to the Seattle City Council regarding its position on pre-trial detention, stating that "virtually no circumstances justify pre-trial detention in the context of misdemeanor accusations." This letter accompanied the submission of Part 1 of a two-part report requested by the Seattle City Council, a joint report with the Seattle City Attorney's Office and the Seattle Municipal Court, to address alternatives to the money bail system. This report is referenced in a special report by the Seattle Weekly, [Locked up and Poor: King County and Seattle courts use money bail to incarcerate defendants before trial. Should the system be reformed?](#) According to the section of the report prepared by the Seattle City Attorney's Office on the use of unsecured bonds, 77 percent of detainees in King County are being held pre-trial.⁷ This section discussed three jurisdictions that have utilized unsecured bonds, providing some evidence that there is little difference between unsecured and secured bonds in guaranteeing clients' appearance.

The Board is unaware of any data showing that there has been any meaningful use of unsecured bonds in District or Municipal Courts and will renew its recommendation that such alternatives be utilized. The Board commends the County for including in its 2019-

⁷ Citing the Pretrial Reform Taskforce: Data Subcommittee presentation by DRS. Jacqueline VanWormer and Andrew Peterson February 28, 2018.

2020 budget resources to support bail reform and recommends utilizing these resources to move toward policy change.

4. **Holistic Representation:** DPD and other criminal justice system stakeholders should continue to advance equity and social justice through addressing the social and civil legal needs that bring people into or back into the criminal justice system.

Board Comment: During the past year, DPD expanded its client service through the work of three civil attorneys funded by the City of Seattle. These attorneys assisted clients with the myriad legal barriers created by their criminal history, such as housing, employment, and education. Although the 2019-2020 county budget did not include funding for these positions, it included funding for a post-conviction unit to address the barriers DPD clients face based on criminal history records. DPD has leveraged this funding to continue and expand the civil legal work that is vital to addressing the non-criminal legal needs of their clients.

5. **Increased Diversion Alternatives and Restorative Justice Opportunities for Adults:** Much effort is being expended to divert youth from the juvenile justice system and provide restorative alternatives. Similar efforts must be made in the adult criminal justice system where young adults, 18 and older, are also in need of more effective interventions.

Board Comment: Progress has been slow on creating more true diversion opportunities for young adults.

6. **Community Outreach:** DPD should expand efforts to work with its clients' communities to both seek better outcomes for clients in their individual cases and press for meaningful criminal justice reforms. This will entail establishing objectives and a plan for a more robust and coordinated community outreach program to address major social, equity, and criminal justice issues. The plan should include a description of the additional resources that will be necessary to implement the plan and a job description of the person, an Equity and Social Justice Coordinator or other position, having responsibility for implementing the plan. The Department should also expand its well-received civics course for high school students to schools across King County. Educating students about the criminal justice system and their rights within it are critically important to enhancing equity and social justice.

Board Comment: The Department does not have a staff position dedicated to coordinating community outreach or equity and social justice efforts. Nevertheless, particularly under the new leadership, DPD has emphasized partnering with impacted communities on policy reforms. DPD staff also have engaged in local "participatory defense" training, a model that uses community organizing to change outcomes for people who are accused of crimes by engaging their families and their communities to transform the balance of power that exists in the court system.

2018 RECOMMENDATIONS

1. The Department should develop and apply a comprehensive strategic plan with goals, objectives, strategies, and activities that address quality and consistency for clients and the effective use of County resources. (Concurring with the King County Auditor and renewing 2017 PDAB Recommendation #3.)
2. The County must dedicate the appropriate resources necessary to implement an accurate case management and data collection system within DPD. This is essential not only for efficient staffing of cases and compliance with Supreme Court-mandated caseload limits, but to allow the Department and the County to identify and timely address trends bearing on the allocation of resources within DPD. In its prior Annual Reports, the PDAB noted the importance of collecting accurate data. While there has been some progress over the past four-plus years, the current capability remains inadequate. (Concurring with the King County Auditor's Report and renewing 2017 PDAB Recommendation #4).
3. The Department should identify the numerical measures that would be most informative for measuring the work of defenders and support staff and begin collecting that data. The Board also recommends that DPD continue to develop a more robust evaluation process that is consistent across all divisions and that examines the work of the attorneys and staff in a more in-depth manner. That should include observations of the attorneys in court, obtaining feedback from others in the criminal legal system, including the judges and opposing counsel, and reviewing the attorneys' written work. DPD should also obtain input from clients and determine how best to utilize that information in ensuring quality representation. (Renewing 2017 PDAB Recommendation #7).
4. The Department should complete training manuals and resources for all divisions, consistent with its strategic plan and the work completed in addressing Recommendation #3. (Renewing 2017PDAB Recommendation #5).
5. The Department, after securing reliable data, should prepare a report on the various structural options raised in the King County Auditor's Report, which details the advantages and disadvantages of each option, including maintaining the current structure. The County should provide resources to the Department to engage in this critical work.
6. The Executive and Council should, in consultation with the Board and the Department, examine whether the Board's enabling ordinance should be amended, given lessons learned from implementing the ordinance over the past four years.
7. The Department should continue its engagement with all stakeholders in the development and implementation of alternative court processes that provide meaningful opportunities for clients to access needed services and minimize the impact of justice system involvement. The Department's considerable experience with alternative courts (e.g., Drug Court, Mental Health Court) should inform its ongoing activity in these still-developing justice models. With respect to existing or newly proposed options, the Department should work to ensure that such courts afford clients appropriate protections of their rights and meaningful opportunities for success. The Department must also

ensure that these programs do not improperly widen the net, entangling people in the justice system when referral to needed social services would be a more appropriate and effective response.

8. The Department should develop a robust legislative advocacy program to promote criminal justice reform at each governmental level.

2018 EQUITY AND SOCIAL JUSTICE RECOMMENDATIONS

The Board renews recommendations from its 2017 report that have yet to be addressed and supplements those recommendations as follows:

1. **Addressing the Needs of People Struggling with Mental Illness:** The County must rethink and overhaul the way that the involuntary commitment process is utilized in order to meet the needs of King County residents who struggle with mentally illness. The involuntary commitment process is an expensive and ineffective way to address the significant public mental health crisis the County and state faces. Effective mental health services must be made available to community members earlier and on a more consistent basis.
2. **Pre-Trial Detention:** The County should work to reduce pre-trial detention through reforming bail practices and adequately resourcing alternatives to detention, such as work release. Individuals accused of misdemeanors who are not released on their own personal recognizance in District and Municipal Courts should be permitted to post unsecured bonds, which allows them to avoid the financial burden imposed by private bond companies. The Department should also advocate for funding effective pre-trial supervision programs that permit defendants to remain in the community pending trial.
3. **Increased Diversion Alternatives and Restorative Justice Opportunities for Adults:** Much effort is being expended to divert youth from the juvenile justice system and provide restorative alternatives. Similar efforts must be made in the adult criminal justice system where young adults, 18 and older, are also in need of more effective interventions. See Recommendation #7, above.
4. **Report on how trauma informed practices will be incorporated in the design and use of the new youth jail:** The County has taken an ambitious and progressive approach in its [*Roadmap to Zero Youth Detention*](#), calling on all decision-makers to publicly adopt a public health approach. A public health approach includes trauma informed principles. There is no publicly available information on how the new youth jail will be trauma informed in its design or in its use. Given the concerns raised about building the new youth jail by many community members and community-based organizations, the County should be transparent and report to the public about how it is designing the building to meet the needs of children it will detain in a trauma informed manner.