



King County

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 17, 2009

Motion

Proposed No. 2009-0175.1

Sponsors Gossett

1 A MOTION approving the department of community and
2 human services's, in conjunction with the office of
3 management and budget, report and the proposed
4 recommendations to the contract payment allocations for
5 independent public defense contractors

6
7 WHEREAS, the King County council included a proviso within the office of the
8 public defender's section of Ordinance 16312 adopting the 2009 budget, and

9 WHEREAS, the proviso requires the office of the public defender to extend 2008
10 contracts by amendment "until the council receives and approves by motion the
11 components and justification for each component that will be used to develop the
12 indigent defense contracts between King County and the nonprofit defense corporations,"
13 and

14 WHEREAS, "These components shall be consistent with the model adopted by
15 the council in Motion 12160," and

16 WHEREAS, the report shall be "developed by the department of community and
17 human services, in conjunction with the office of management and budget" to "include

Motion

18 current data and input from the contract defense contractors and the King County Bar
19 Association," and

20 WHEREAS, the "data shall include, but not be limited to, information on
21 caseload, staffing and calendaring of cases for felony, complex felony, juvenile,
22 misdemeanor, involuntary treatment, persistent offender and dependency cases," and

23 WHEREAS, the executive has transmitted to council a report complying with the
24 requirements of the proviso, and

25 WHEREAS, the King County council finds that the proposed reimbursement
26 methodology and cost changes to the 2009 Executive Proposed Budget;

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

28 The department of community and human services's, in conjunction with the
29

Motion

30 office of management and budget, report regarding proposed recommendations to the
31 contract payment methodology and budget modification is hereby approved.

32

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

ATTEST:

Attachments A. Response to KCC Proviso Regarding Indigent Defense Contracts with Independent
Non-Profit Law Firms.pdf

2009-175



King County

**Department of
Community and Human Services
Office of the Public Defender**

**Response to King County Council Proviso
Regarding Indigent Defense Contracts with
Independent Non-Profit Law Firms**

February 20, 2009

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Executive Summary

In response to a proviso contained within the 2009 Adopted Budget, Ordinance 16312, this report describes the budget model used by the Department of Community and Human Services (DCHS), Office of the Public Defender (OPD) to develop the 2009 Executive Proposed Budget and makes recommendations for addressing public defense contractor issues related to the Public Defense Payment Model (the Model) and their contracts with King County.

The King County public defense contracts define the law firms as independent contractors, per the definition in the case law of Washington State law. It is the intent of the county that the firms are fully independent contractors and the county has retained all legal rights to monitor them and set contract requirements. At all times, the county remains fundamentally liable to all clients to provide legal services mandated under the U.S. and Washington State Constitutions and other laws.

Representatives of DCHS, OPD, the Office of Management and Budget (OMB), Associated Counsel for the Accused (ACA), Northwest Defenders Association (NDA), Society of Counsel Representing Accused Persons (SCRAP) and The Defender Association (TDA) met bi-weekly between December 22, 2008 and January 15, 2009. County and contractor staff discussed a variety of issues related to the Model and contracts, which are summarized in the report. This process was a significant commitment of work and time on behalf of both county and contractor staff and the collaborative, open and rigorous discussions are a credit to all involved.

Recommendations with Significant Cost Components:

Please note that all dollar amounts are annual; the 2009 impact for each is half the amount provided.

1. Clerical staffing levels

The 2009 Executive Proposed Budget assumed a clerical staffing ratio of 0.10, or one clerical staff position for every ten attorneys. The report recommends setting a clerical ratio of 0.20 per attorney, at an increased cost of \$459,810 over the 2009 Executive Proposed Budget. The actual contractor average ratio is 0.18 and the 2008 Model ratio was set at 0.25.

2. Expedited felony calendar

The report recommends a doubling of the funding and staffing for Expedited felony calendars from the 2009 Executive Proposed Budget, providing two FTE attorneys per scheduled calendar. If District Court holds nine weekly calendars, as envisioned in the 2009 Executive Proposed Budget, the additional annualized cost is \$486,561.

3. Attorney salary parity realignment and attorney salary levels beyond the current public defender scale (the addition of Senior IV and V levels)

The report recommends including Prosecuting Attorney's Office (PAO) attorney levels Senior IV and V for maintaining parity. Previously, only senior attorney levels I through III were used to define the range of salaries. A related recommendation is to use the PAO's January Pay Roll

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Reconciliation file to establish the percentage of attorneys in each class and the average salaries of attorneys. The combined cost of including Senior IVs and Vs and using the January Pay Roll Reconciliation file is \$1,529,402 over the 2009 Executive Proposed Budget.

4. Partial funding of FTEs

The report recommends that caseload projections in each contract case area be rounded up or down so that no partial FTEs are created. This will allow each contractor to start the contract year with only full FTE attorneys funded. The result of the recommendation is an increase of \$207,000 over the 2009 Executive Proposed Budget.

5. Professional staff salary review (social worker, investigator, paralegal)

The report recommends using the current Model methodology and a 2008 survey of the comparable public market, rather than inflating the 2005 survey, for a reduction of \$1,209 from the 2009 Executive Proposed Budget.

6. Benefits

The report recommends resetting the benefit rate to 2008 actual costs to determine the weighted average, with annual adjustments by the King County benefits inflation rate for the next three years of the Model. After three years, the base would be recalibrated based on actual benefit costs. The result of the recommendation is a \$215,424 system-wide increase from the 2009 Executive Proposed Budget.

7. Rent

To smooth out rent adjustments in the Model, the report recommends using a three-year average of actual caseload (2006, 2007, and 2008) and applying it annually to an updated three-year rolling average rental rate. The cost of this option as compared to the 2009 Executive Proposed Budget is an additional \$170,990.

Issues Recommended for Continuing Collaborative OPD and Contractor Effort

1. July 1, 2009 expected electronic filing changes by the Department of Judicial Administration
The report recommends no changes be made in the Model to account for this new process, but OPD will monitor the new process and assist with troubleshooting as it is put into practice.
2. Case weighting of general felony caseload
The report recommends immediately establishing a workgroup of criminal justice system stakeholders to more fully address on the impacts of the filing standard changes on defense attorney workload. OPD will conduct a review of affected case types to determine the weighting dynamic, historic reference and future trends, and anticipated financial adjustment, if any, to the overall OPD budget. The discussion also may include interim adjustments to the credit based system while analysis of case trends and budget implications is completed.

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3. Process for reviewing issues that impact work and funding mid-contract
The report recommends the establishment of a monthly contractor director meeting with OPD to discuss county defense services system topics.
4. Information Technology (IT)/King County network issues
The report recommends renewing efforts to complete the transition of the contractors off the county WAN by reassessing county IT concerns and financial impacts, and reinstating an IT workgroup to complete a detailed recommendation.

I. Introduction

The 2009 Executive Proposed Budget included a \$6 million reduction in the budget for the Office of the Public Defender (OPD). This reduction was driven primarily by a projected 8 percent reduction in felony and misdemeanor caseload, as well as the Prosecutor Attorney's changes to the Filing and Disposition Standards that shifted low-level drug and property crimes from felonies to misdemeanors. The proposed budget also included reductions made for budgetary reasons as the General Fund grappled with a \$93 million deficit. Among these was the reduction of the clerical staffing ratio from 0.25, or one clerical position for every four attorney positions, to 0.10, or one clerical position for every 10 attorney positions.

The Public Defense Payment Model (the Model) was updated in compliance with council's expressed intent in Motion 12160, which states "the model shall be updated and revised as needed for the 2009 budget." Updates to the Model included adjusting the overhead rate change and the rental rates, correcting formula errors, reducing reimbursement for non-legal professional staff training, reducing the ratio of clerical staff from 0.25 FTE per attorney to 0.10 FTE per attorney, and re-setting the attorney salary levels on parity with the PAO.

Council significantly altered the proposed budget for OPD and included funding for only the first half of 2009. The 2009 Adopted Budget contains a proviso expressing council's intent that the defense contracts no longer coincide with the calendar year; rather, the next 12 month contract will be for the period July 1, 2009 through June 30, 2010. Two provisos articulated council's intent:

Section 49, P1:

Of this appropriation, funding for contracts between the office of public defense and the public defense nonprofit corporations that provide indigent defense services for King County shall be expended solely on contracts that ensure that expedited gross misdemeanor cases resulting from the prosecuting attorney's filing and disposition standards ("FADS") continue to be reimbursed using the existing case credit, and not calendar-basis, reimbursement methods and shall also ensure that clerical staffing levels are reimbursed at the levels generated by the 2008 model, until the council approves by motion an updated methodology for reimbursement consistent with the

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intent of Motion 12160. It is the intent of the council that the office of public defense shall work collaboratively with the nonprofit defense corporations and the King County Bar Association to update the reimbursement methodology as soon as possible. Further, it is the intent of the council that new contracts for indigent defense to cover the period July 1, 2009, through June 30, 2010, be negotiated by the office of public defense and the public defense nonprofit corporations and submitted to the council by March 31, 2009, for approval. These contracts shall be developed in accordance with the model adopted by the council in Motion 12160 and shall be developed with regularly updated information and input from the contract defense agencies regarding caseload, staffing and calendaring of cases for felony, complex felony, juvenile, misdemeanor, involuntary treatment, persistent offender and dependency cases, as well as review and input by the King County Bar Association.

Section 49 P2:

Of this appropriation, \$1,000,000 shall not be expended or encumbered until the council receives and approves by motion the components and justification for each component that will be used to develop the indigent defense contracts between King County and the nonprofit defense corporations. These components shall be consistent with the Model adopted by the council in Motion 12160. The report shall be developed by the department of community and human services, in conjunction with the office of management and budget, and shall include current data and input from the contract defense contractors and the King County Bar Association. The data shall include, but not be limited to, information on caseload, staffing and calendaring of cases for felony, complex felony, juvenile, misdemeanor, involuntary treatment, persistent offender and dependency cases. The report shall be submitted no later than February 1, 2009, to ensure council approval of the proposed methodology prior to negotiation of the new contracts between the county and the contract defense firms. It is the intent of the council that the office of public defense shall work collaboratively with the nonprofit defense corporations and the King County Bar Association to complete the report and transmit it to the council as soon as possible.

A similar proviso in Section 16 places a \$100,000 expenditure restriction in the 2009 budget for the Office of Management and Budget (OMB).

In response to P1, OPD extended the 2008 contracts through May 2009 for the four contractor agencies—Associated Counsel for the Accused (ACA), Northwest Defenders Association (NDA), Society of Counsel Representing Accused Persons (SCRAP) and The Defender Association (TDA). In extending the 2008 contract, OPD updated the Model with the projected 2009 caseload. Because of the contingent nature of the Model, updating caseload projections had an impact on other areas of the budget, including adjusting the amount allotted for rent

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downward. Once council approves the motion accompanying this report, the \$1 million expenditure restriction in P2 will be released and OPD will be able to extend the current defense contracts through June 30, 2009.

This report has been prepared in compliance with P2. It includes background information related to the establishment and assumptions of the Model, a summary of the Senior Parity Study that established the current senior attorney funding levels, and an overview of the technology situation and needs of the defender agencies, as well as an explanation technical adjustments to the Model for the 2009 Executive Proposed Budget, a discussion of the issues raised by defense agencies, and recommendations related to those issues.

The report is the product of extensive engagement between county staff and staff from each of the four defender agencies. After meeting bi-weekly between December 22, 2008 and January 15, 2009, staff from the Office of the Public Defender (OPD) prepared drafts of the report and provided defender agencies the opportunity to comment upon the draft.

II. Background

A. Principles of Public Defense

The basic principles that govern King County's approach to public defense services start with a commitment to a quality public defense system. The 2008-2009 budget level and current Model is evidence of this commitment.

- King County accepts the responsibility to provide, account for and manage the public defense program.
- King County acknowledges the commitment and dedication of past and present contractor board members and staff and asserts that the long standing quality of the county's program can be attributed in large measure to their efforts and collaboration.
- King County recognizes that public interest and the considerations of private non-profit corporations may diverge. The fact that public and private interests may diverge does not detract from the commitment and contributions public sector or private sector individuals have made to the public system.
- King County recognizes the responsibility to ensure the smooth and unhindered functioning of public defense within the criminal justice system.
- King County embraces its duty to make the best and most efficient use of public funds.

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B. Contract principles

King County has contracted for indigent legal defense services for over 30 years. Three of the four current contractors have provided indigent defense services under contract with King County for several decades. The current contracts carry forward the same scope of work provided by these contractors for many years. Historically, King County Council has not reviewed these contracts until late into the contract period. Since 2006, the contracts set a new annual precedent in being executed by contractors and the executive before the beginning of the contract period. This marked a change in business practices and the achievement of a major business goal for OPD and the start of a negotiating and contracting business practice.

The total amount of reimbursement included in the contracts results from the application and update each year of the Model approved by the King County Council Motion 12160 in 2005 (see Appendix A). The allocation of funds for each case area is calculated to provide funding for public defender salaries at parity with similarly situated attorneys in the PAO. It is important to note that the county uses the Model to calculate the total amount of each contract, but the Model does not control or direct the contractors in how they spend that contract amount. Further, while the contract includes some reporting requirements, the contractors, not the county, determine how they provide the contract deliverable—public defense service.

Major features of contracts are as follows:

- It is the intent of the county, as stated in the contract, that the firms are fully independent contractors and the county has retained all legal rights to monitor them and set contract requirements. At all times, the county remains fundamentally liable to all clients to provide legal services mandated under the U.S. and Washington State Constitutions and other laws.
- Since 1988, contract workload has been scaled to adhere to caseload standards, which define attorney workload.
- Contractors are able to request additional compensation for extraordinary cases.
- Contractors must provide necessary support to attorneys:
 - Training
 - Clerical, office, investigator, social worker and (paraprofessional) paralegal support
 - Supervision (one supervisor for ten attorneys).

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- Contractors must comply with minimum experience standards when assigning attorneys to cases.
- Attorneys are required to:
 - Contact their in-custody clients within 24 hours and out-of-custody clients within five days of assignment
 - Provide effective assistance of counsel
 - Adhere to professional standards, including the Washington State Bar Association's Rules of Professional Conduct (RPCs).
- Expert witness services and similar related expenses are provided for outside of the contracts by specific requests to OPD pursuant to Court Rules.
- Contractors must keep sufficient records to verify workload and costs. The county requires that there be a direct relationship between the funds provided and the costs incurred. Contractors must structure their accounting systems to report expenditures for each revenue source received. The county retains sole discretion to determine whether the costs are related to legal services.
- The contract presumes, but does not require, that, with certain exceptions, a single attorney will handle an assigned case until conclusion.
- Historical statistics show that the numbers of criminal cases ebb and flow, depending on filings made by the PAO. Contractors are required to take all cases assigned (unless a legal conflict exists) and manage the flow of cases. The county, in turn, will pay the contractors for cases assigned over the contract amount on a regular basis, outside of a contract defined variance. OPD has worked with the contractors to ensure they have the information they need to manage the ebb and flow of cases.
- The county and contractors agree that when operational or performance issues arise in the course of providing the services of a contract, a resolution of an issue or concern will be attempted at the lowest administrative level possible, although generally contact with the contractors shall include the managing director. The contract includes a dispute resolution process as a discretionary method of resolving disputes.
- The contractors must maintain practice standards, as approved by OPD in 2006, that set objective, measurable expectations for each duty included within the scope of work for each position and govern such areas as the lawyer-client relationship, use of paraprofessionals, supervision of attorneys and paraprofessionals, and use of



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expert witnesses. The contractors must maintain, and revise as necessary, a method for monitoring and reporting compliance with the standards.

- The contractors must report the charge/case type for all assigned clients at filing and disposition and the number of attorney hours, and hours of investigators, social workers, and paralegals, spent on all closed cases. The data supplied assist OPD in gaining a better understanding of the resources required for representing each case type and serves as documentation for reimbursement methodology.
- Monthly payment is not only subject to performance requirements being met, but also on completion of scheduled corrective action requirements noted in the previous contract periods' site visit review and the contractor's plans for corrective action. For each corrective action due date missed, one percent of the subsequent month's payment will be withheld until action is completed and a report is received and accepted by the county.
- The contractors continue to be contractually required to comply with negotiated policies and procedures addressing client complaints, extraordinary occurrences, attorney supervision, security and administration of information systems, and case withdrawal.
- Contractors must structure their accounting systems to report expenditures for each revenue source received. This "cost center" accounting approach will account for county funds for public defense services separately from state funds and other fund sources.
- In the sexual predator practice area, legal representation for indigent persons assigned by OPD for cases filed under RCW 71.09, civil commitment petitions filed by the PAO or the Attorney General's Office, are subject to such conditions stated in the current Program Agreement and General Terms Agreement between the County and the State of Washington Department of Social and Health Services (DSHS). The contractor is paid directly by DSHS for these cases assigned to the contractor by OPD at a rate determined by DSHS or as ordered by the Court. OPD applies its policies and procedures, as amended and posted on its website, to review and approve or deny requests from contractors for use of expert services in cases filed under RCW 71.09. Such authorization for expert services shall be made at the sole discretion of OPD, pursuant to legal standards of necessity for an adequate defense in these cases and subject to review by the court. Expert service reimbursement are invoiced to and provided directly by DSHS.



C. Definition of assigned counsel panel and circumstances of case assignment

OPD assigns indigent defendants to one of the four contractors unless a legal conflict of interest (as defined by Washington Supreme Court Rules of Professional Conduct, RPC 1.7-1.9) prohibits each of the four contractors from accepting a given defendant. In this event, the defendant is assigned to a member of the assigned counsel panel. General features of the assigned counsel panel are:

- Each member is an attorney licensed to practice law in the State of Washington;
- The members of the panel are “independent contractors” and are not employees of the county, state, or any county agency;
- Members of the panel are assigned cases based upon a match of the case requirements with the panel members’ qualifications; and
- Assigned counsel attorneys are paid a fee per hour depending upon the type of case represented.

The Rules for Professional Conduct (RPC) provide the definition of an ethical conflict of interest for an attorney. If a conflict of interest exists, the attorney, and in the case of OPD contractors, the entire contractor, must decline the case. Such cases are then assigned to another contractor or to private counsel if every contractor has a conflict. The four contractors use different interpretations of the RPC to govern their appraisal of an ethical conflict, but each of these interpretations is compliant with the RPC.

There will continue to be a need for an assigned counsel panel in the foreseeable future. The OPD appropriation in the 2009 Adopted Budget contains over \$1.5 million to cover the first six months of assigned counsel expenditures in the case areas of Contempt of Court, Juvenile Offender, Dependency, King County Misdemeanor, Felony, and Involuntary Treatment. Examples of other conflict reasons in addition to a conflict of interest include:

- Some cases require specialized attorney skills, which the contractor may not possess.
- The contractor has the skills needed for a particular case, but its attorneys are already fully utilized with other casework.

D. Cost control challenges

- Areas of increasing cost are governed by the existing funding policy and service demand presented by increasing numbers of cases in certain case areas.

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- OPD does not control demand for services. When the Prosecutor files cases, OPD does not have the option of not assigning counsel for indigent persons. Court orders likewise regularly require assignment or substitution of counsel. Constitutional and statutory requirements dictate provision of expert and other extraordinary case expenses necessary to provide an adequate defense and effective representation.
- Defense attorneys must be independent in the professional exercise of defense on behalf of their clients. Defense attorneys structure the case specific defense, including the request for expert or extraordinary case expenses.

E. Other funder responsibilities:

1. Dependency cases are filed by the State Attorney General and investigated by the State, Department of Social and Health Services/Child Protection Services (DSHS/CPS), yet the county bears the cost of providing defense attorneys in these cases. It has been a county legislative priority to acquire state funding sufficient to recover all dependency related costs. The Washington State Supreme Court has reviewed this issue in *In Re J.D.*, 112 Wn.2d 164 (1989). The court refused to order the state to pay for defense services, specifically indicating that counties have paid for this historically and any change is an issue for the legislature. The state legislature is gradually providing increased funding to jurisdictions to defray dependency representation costs for representation of parents through the Washington State Office of Public Defense Parents Representation Program; however, King County has not to date received direct state funding for this purpose.
2. The state funding formula for the Becca program must be changed to fully fund King County's workload and costs. A complicating factor as of January 13, 2009 in *Bellevue School District v. E.S.* will significantly increase the county's cost for truancy defense in this case area.
3. Extraordinary criminal justice funding through a discretionary grant from the legislature is available every year, to assist in the costs to a county of aggravated murder cases. These expenses of a county for aggravated murder cases include the costs of public defense and expert witnesses. OPD submitted an application to the State of Washington for public defense costs for 2007, but no funds were provided by the state. Application for these funds has been made for 2008. The application was made in conjunction by the PAO, OPD, Superior Court, Department of Adult and Juvenile Detention, and the King County Sheriff's Office, and is compiled by OMB and State OPD.
4. The Washington State Legislature has provided increased funding to counties and certain municipalities for the purposes of improvement of public defense, which

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funds are administered by the Washington State Office of Public Defense. Application must be made annually, and specific details as to improvements within the public defense system in the county must be provided. Funds received to date have been used to supplement contractor juvenile offender funding to reduce caseloads in this area, to increase assigned counsel compensation (including graduated increases for the most serious felony and aggravated murder cases), quality control and attorney training and continuing legal education directed to public defense practice areas and skills.

III. Public Defender Budget and Payment Model

“... justification for each component that will be used to develop the indigent defense contracts between King County and the nonprofit defense corporations. These components shall be consistent with the Model adopted by the council in Motion 12160.”

A. Overview

1. Intent of the Model

The purpose of the Public Defense Payment Model is to create a common basis of payment that is consistent across all contractors based on contractor costs. This common basis of payment is used to structure the current year contracts, pay for current year services, and plan the next year's budget.

2. History of the Model

The Model was developed for initial use in the 2006 budget development and to structure the payment amounts in the 2006 contracts.

3. Structure of the Model

The Model includes three basic components. First, a uniform price per credit¹ is calculated for each caseload area (this includes salaries, benefits, direct overhead and mileage costs for all staff working directly on cases). Second, administrative and indirect overhead allocation rates are calculated to cover salaries and benefits for administrative personnel (e.g management positions and receptionists) and general office operations costs, excluding rent. Third, a rent allocation is calculated based on the number, location and function of full-time equivalent (FTE) staff.²

¹ Case credit has been used as the Public Defense unit of work for many years. It does not necessarily equal an individual case, but is more equal to the attorney workload on a case type.

² Strictly speaking, the “price per credit” includes only the first component. However, in daily usage, often, the second and or third components are broken down and figured into a system wide “price per credit.” The agency contracts break out the

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Annual budget development begins with the projection of annual caseload for each case area, an adjustment to the Model for cost of living allowance (COLA) for attorneys, staff and specific administration/overhead categories³, and an adjustment to bring defense attorney salaries into parity with the PAO. This information is entered into The Model and results in an estimated budget for each case area and for contractor administration and overhead system wide.

Each contract is structured to identify the number of case credits anticipated to be performed in each assigned case area by each contractor. The Model is used to calculate the amount to be paid to each contractor for each case area and for administration/overhead, which is identified separately in the contract. The rates paid per unit of work in each case area and per FTE for administration/overhead are uniform among all contractors.

Expert requests are submitted in a small percentage of felony cases and rarely in misdemeanor or other cases. These are costs determined by the court or OPD to be necessary to provide an effective defense. The Superior and District Courts have delegated the initial decision to OPD by Local Court Rules. The requests are part of the attorney's independent work on each case and are a court decision, which the King County courts have delegated to OPD. Denials by OPD may be appealed to Superior or District Court. In 2008, OPD processed 2,048 expert funding requests. 125 were orders initiated by the court, particularly in ITA court. Of the balance, OPD denied only 133 requests. Neither the Model nor the contract imposes limits on the number or cost of experts that attorneys may request or use in a case. Contractors are able to request additional funding to account for increased attorney and support staff needs on a case by case basis. Generally, these requests are in the form of request for extra credits for extraordinary cases. In rare circumstances, funding requests are made for additional support staff as an expert services funding request, particularly where exceptional investigator or paralegal needs exist.

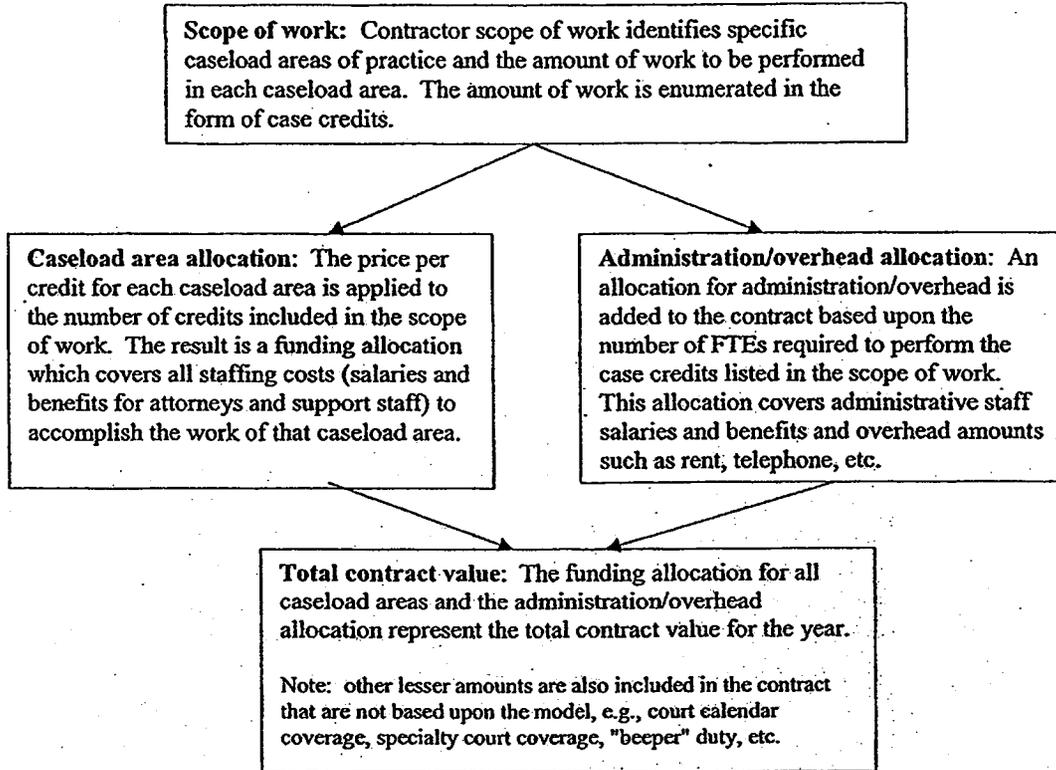
Figure 1 presents a high level overview of how the Model translates into the contract payment structure.

three components: the contract payment section states a monthly payment for each case type (calculated by multiplying number of credits times the first component "price per credit." In addition, the contract payment section states the agency administration and overhead (the second component) and rent (the third component).

³ Specific categories that received COLA are those for which county agencies receive COLA during the PSQ budget process, e.g., telecom services, computer supplies, capital purchase, utilities, etc.

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Figure 1
Illustration of the Contract Payment Structure of the Model



Additional use for price per credit:

For most case areas, the contract includes a risk sharing feature. The contractor absorbs excess workload up to 2.5 percent above in felony credits and five percent above in the other case areas of the contract level. Conversely, the contractor does not return funds to the county if the actual work performed is less than 100 percent but more than 97.5 percent in felony workload and 95 percent for the other case areas of the amount given in the contract. The calculated price per credit is used in the event that the county should have to pay for additional work (above 102.5 percent in felony and above 105 percent for other case areas) or the contractor should have to reimburse the county when performance is below 97.5 percent in felony and 95 percent in other case areas of the contract credits.

Administration/overhead treated as fixed cost by contract:

The administration/overhead allocation is assigned to contractors based upon the number of FTE required to complete the work identified. The allocation is meant to cover costs such as rent which are fixed and must be paid even if workload drops during the contract year. Therefore, unlike the caseload area allocation, the administration/overhead allocation does not have to be returned in part to the county if actual work performed during the year is less than 100 percent but more than 97.5 percent in felony workload and 95 percent for the other case areas of the contract work statement.

B. Model details

1. Price per credit payment

The price per credit for a given caseload area is calculated by adding the attorney cost, the support staff cost and the benefit costs and then multiplying the total by the number of case credits projected for the year. The derivation of the six cost components is described below.

a. **Attorney component.** This component of the Model is structured to provide the number of attorneys necessary to handle the annual projected caseload volume in each case area. The Model further acts to ensure that funds are sufficient to provide the appropriate level of attorney (e.g., experience, training, capability) for each caseload. The tools used in deriving at the attorney cost component are:

- Kenny Salary Schedule, inflated by the adopted cost of living allowance (COLA) rate, which ensures the public defense attorney salary are in parity with the PAO.
- A distribution of attorney qualification levels determined to sufficiently meet the demands of a particular caseload area as well as providing for the rotation of an attorney among other practice areas.
- Caseload standards for each caseload area.
- Attrition rate in applicable case areas (specialized court case areas do not have an attrition rate).

b. **Supervising and Senior Attorney component.** This component of the Model is structured to provide the number of supervising attorneys necessary to administer and mentor the caseload attorneys assigned in each case area. The Model further provides a one attorney supervisor to ten attorneys (0.1 FTE supervisor per attorney) and ensures that senior level attorneys act as supervising attorneys as measured by their experience, training, and capability for each case area. The tools used in deriving at the attorney cost component are:

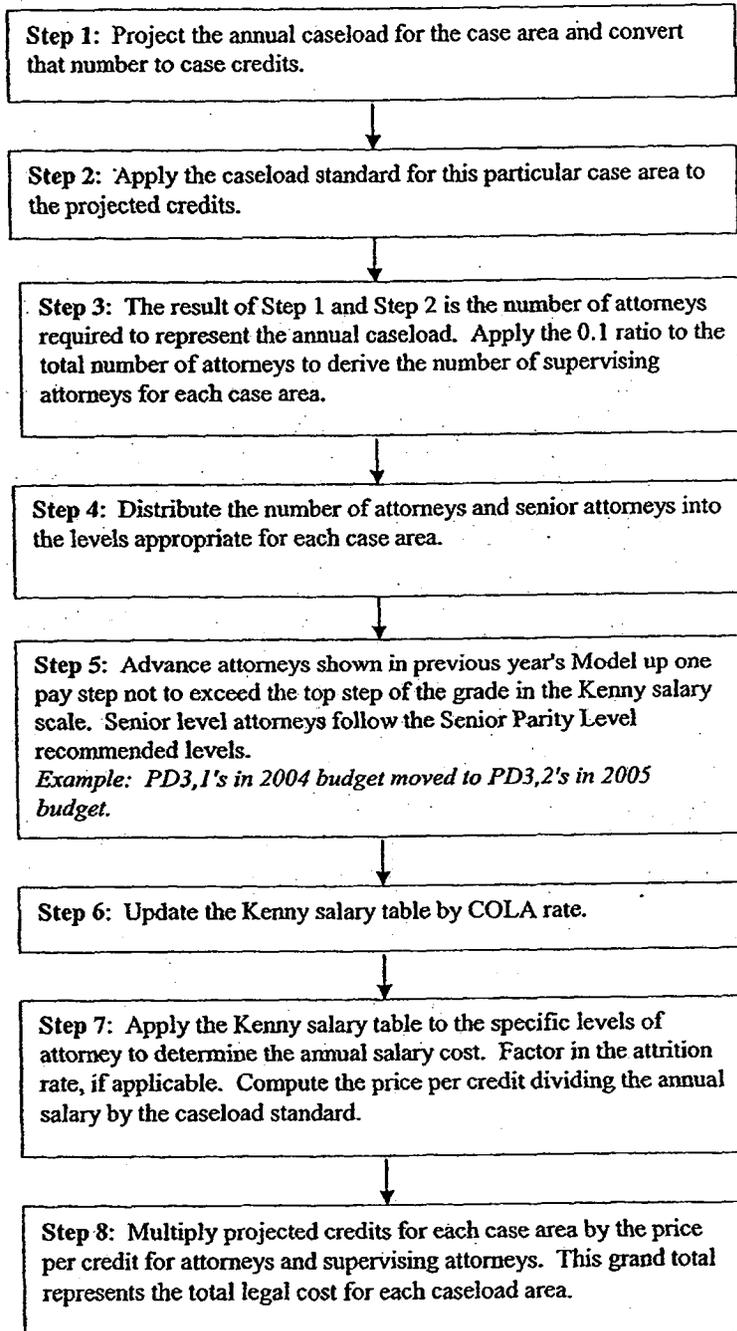
- Kenny Salary Schedule, inflated by the adopted COLA rate which ensures the senior public defense attorney salaries are in parity with the senior PAO attorney salaries.

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- A distribution of attorney qualification levels determined to sufficiently meet the demands of a particular caseload area as well as providing for the rotation of an attorney among other practice areas.
- Supervising attorney ratio of 0.1 per caseload attorney in each case area.
- Caseload standards for each caseload area.

Figure 2 on the next page demonstrates how both the attorney and supervisor components combine with the caseload projections to result in a total legal cost.

Figure 2
Illustration of Legal Cost Component of the OPD Budget and Payment Model



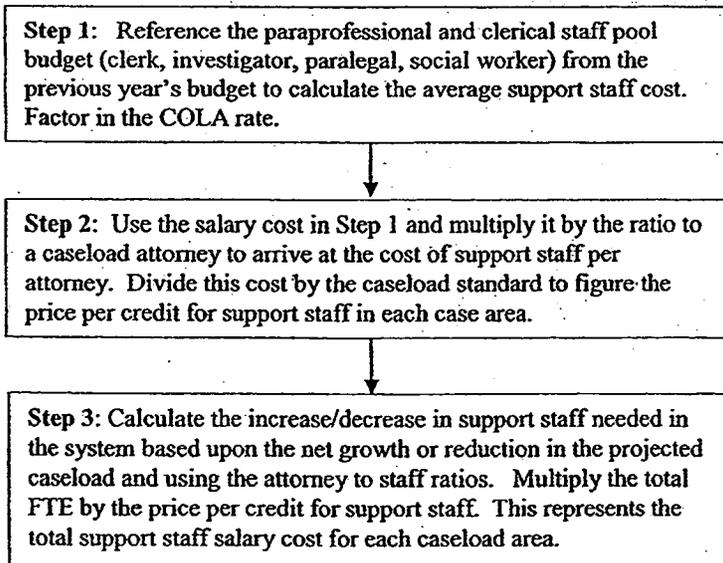
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- c. **Support staff component.** This component of the Model is structured to provide an appropriate level of support to each attorney in each case area. Included in this component are the following levels and categories of support for each attorney:
- Social worker, investigator, and paralegal staff at the combined rate of one FTE for every two caseload attorneys (0.5 FTE per attorney). The Model classifies all three positions under the category of non-legal professionals.
 - Clerical staff at the rate of one clerical FTE for every four caseload attorneys (0.25 FTE per attorney).

Unlike the attorney cost component, a uniform standard of salaries for non-attorney public defender support staff has not been promulgated. The costs related to this component of the Model were constructed using a 2005 market survey of comparable salaries for these positions. COLA was added each year to the 2005 salaries to arrive at the 2008 funding levels.

Figure 3 below shows how costs for this component are constructed.

**Figure 3
Illustration of Support Staff Cost Component of the OPD Model**



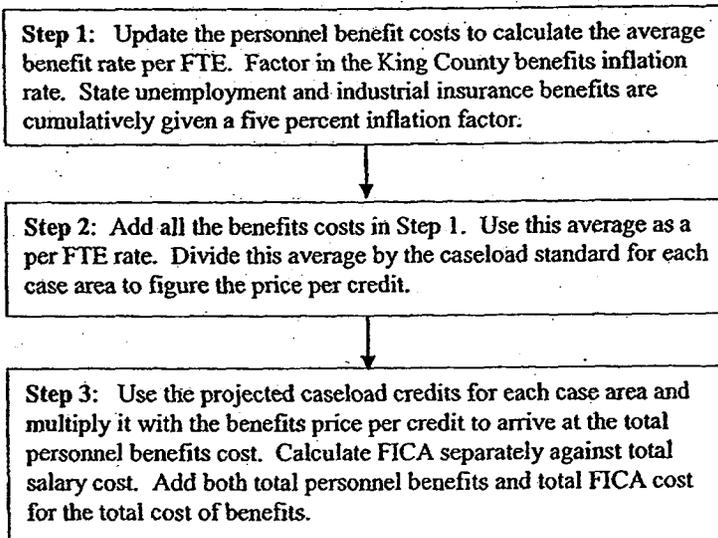
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- d. **Attorney and Support Staff Benefits component.** The costs related to this component of the Model were constructed by using the total amount of benefits funded in the 2003 budget as the base⁴. This component consists of figuring the personnel benefits such as medical, dental, vision, life and disability insurance for the projected total of FTEs as determined by the projected caseload. Federal Insurance Contributions Act (FICA) is another factor included in benefits and is separately calculated against the total projected salary cost for legal and non-legal staff.

The King County benefits inflation rate was used to adjust this amount cumulatively for subsequent years to arrive at the 2006 initial contract level, and for subsequent contract year levels. In circumstances where the budget called for an overall increase in system FTEs (due to caseload growth), an average benefit rate was calculated and multiplied by the number of added FTEs to provide benefit costs. This average benefit rate was calculated to be the average benefit cost per FTE across the four contractors.

Figure 4 illustrates how the benefits component is determined.

**Figure 4
Illustration of Benefits Component of the OPD Model**



⁴ Benefits for all staff, including support staff, initially used the 2003 actual contractor expenses for benefits and were cumulatively adjusted for each subsequent year by the King County benefits inflation rate.

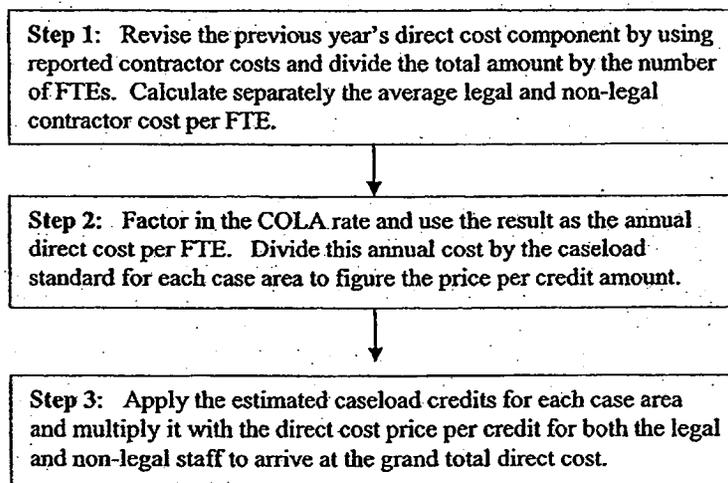
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- e. **Direct Cost component.** This component of the Model pertains to the practice of law related overhead costs. It represents the costs for insurance, licenses, continuing legal education, memberships and dues, library/legal research and desktop computer replacement for legal and non-legal professional staff. These costs are identified as direct overhead costs of providing public defense service.

This component is derived using the weighted average cost of the 2005 reported totals and annually compounded by the COLA percentage rate.

Figure 5 consists of the steps followed to come up with the Direct Cost component.

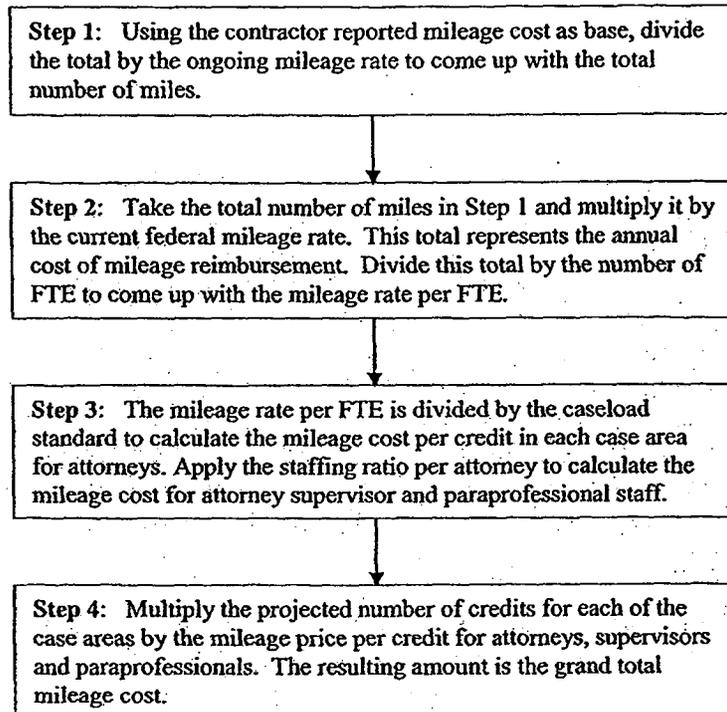
**Figure 5
Illustration of Direct Cost Component of the OPD Model**



- f. **Mileage Cost component.** The practice of law provides attorneys, social workers, investigators and paralegals reimbursement for travel costs. This component of the Model addresses the payment of mileage expense by updating the mileage rate and total cost annually. The base cost in 2005 is recalculated each year to incorporate the federal mileage rate in the Model.

Figure 6 below details the process of how mileage is determined in the Model.

Figure 6
Illustration of Mileage Cost Component of the OPD Model



2. Administration and Indirect Overhead cost payment

The Model considers the administrative and indirect costs as proportionately dependent on the direct costs of the practice of law. A derivation of a standard percentage rate for administration and indirect overhead is calculated and is used as an inflation rate of the direct costs for the elements in the price per credit. The administrative and indirect costs are directly proportional to the price per credit; as the price per credit increases or decreases, so does the amount for administrative and indirect overhead.

This component of the Model provides funding for the following categories:

- Administrative staff salaries and benefits
- Office operations costs, such as:
 - Telephone

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- Postage
- Messenger
- Supplies
- Other operational expenses.
- Equipment lease and capital purchases
- Training and travel
- Business licenses and taxes

As with the staff benefits, the administration and overhead amounts were based on the 2003 actual costs, on which the 2006 budgets were built. The administration and indirect cost budget was constructed as an OPD system-wide pool without tying specific contractors to specific amounts. This total pool was then divided by the total direct staff related expenditures to arrive at a percentage. The administrative rate, based on the 2003 composite of actual contractor costs, is 8.09 percent of direct contract caseload costs. The indirect overhead rate, based on the 2003 composite of actual contractor costs, is 4.72 percent of direct contract caseload costs. The Model states that these rates "...may be [adjusted] to accommodate for business process changes which may occur from time to time." No changes to the rates have been made over the first three years of the Model, but changes were recommended in the 2009 Executive Proposed Budget.

Public defense contractors receive an allocation of administration overhead based upon their share of total caseload.

3. Rent and Space cost payment

The Model separates rent and space payment from the administrative and indirect costs. The base methodology used to derive the calculation of rent was a market office space survey done in 2005. The survey involved a market analysis of rental space costs per square footage within the Seattle and Kent locations, and comparable office space size allotment for staff position as well as "special spaces" (lunch room, conference room, storage, supply and library space). The resulting total square footage allocation was multiplied by a three-year rolling average of square footage and inclusion of an escalator factor.

The Model used the following assumptions in allocating the rent cost:

- Use of King County space allotments for similar or comparable staff positions and special space requirements (including an additional 25 percent circulation square footage).

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- Use of the Collier's International *The Knowledge Report* (latest quarterly report) review of the Class B Seattle Central Business District (CBD) and Kent CBD office market as published in its website.
- Round caseload FTEs.

The Kent three year rolling average was not updated using Kent market rates because of the unique proximity to the Maleng Regional Justice Center (MRJC) of the Meeker Street building used by contractors. The actual rental cost the Meeker Street building has been used in the Model since 2006.

C. Model review for 2008 contracts

Each year the Model requires an annual update to recalibrate acknowledged variables and built-in rate adjustments. The following is the list used for the funding Model review for the 2008 budget and contract development.

1. Policies

General principles of Model development include constructing a uniform cost structure among contractors, salary parity with the PAO, a price per credit for direct costs, and separate out a common administration and overhead rate, rent allocation, and calendar costs specific to the calendar assignment.

2. Direct Cost – Caseload

a. Concepts:

- Include all costs related to employing attorneys and staff to perform work required on assigned cases.
- Minimize costs assigned to generic overhead/administration.
- Base salaries on market
 - PAO used as market for attorney pricing
 - OPD contractors and other public/private sources used as market for non-legal staff pricing
- Price per credit is final result.

b. Components:

- Attorney salary calculation process:

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- a) Update Kenny scale
- b) For each case area:
 - o Create distribution of existing attorneys by Kenny step
 - o Provide one Kenny step increase for each attorney
 - o Group Senior attorneys in groups comprised of two steps each
 - o Turn distribution into percent
 - o Multiply percent by current Kenny salary
 - o Add total salary to represent one FTE attorney cost
 - o Add factor for attrition
- Supervisor salary
 - o Follow the same calculation process as for caseload attorneys.
- Staff (non-legal and clerical) salary calculation process:
 - a) Conduct a market survey for each category (Investigator, paraprofessional, social worker, clerical).
 - b) Determine the average market high rate and the average market low rate.
 - c) Create distribution of existing salaries and percent of salary as market.
 - d) Create weighted average to combine the three professional categories (investigator, paralegal, and social worker) into one price per FTE.
 - e) Clerical average used without further combination.
 - f) Turn FTE into credit price using caseload standards.
- FICA
 - o FICA is computed at 7.65 percent of salary.
- Benefits calculation process:
 - a) Based on average FTE rate budgeted prior to 2004
 - b) Health benefit subtotal inflated each year by the rate experienced by the county flex plan. State unemployment and State Labor and Industry based on current costs per FTE.
- Direct overhead for Attorneys and Supervisors
 - a) Insurance
 - b) Licenses
 - c) CLE
 - d) Memberships



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- e) Library
- f) Desktop computer replacement
- g) Process of calculation:
 - o Start with 2007 expenditures per FTE.
 - o Add \$500 for desktop computer replacement.
 - o Create weighted average.
 - o Add COLA for 2008 and subsequent years.
- Direct overhead mileage
 - o Process of calculation:
 - Use 2003 as base
 - Compute average contractor mileage per FTE
 - Inflate by percent increase of Internal Revenue Service (IRS) mileage rate
 - Continue to update each year with IRS rate for mileage rate

D. Annual update used for 2008 Budget

Upon conducting the review and analysis process listed above, the adjustments necessary and instituted according to the Model are listed below:

1. Salary

- The Kenny salary scale updated for COLA (at county salary rate) and other changes to match PAO scale.
- Factor a step increase into the attorney distribution model for attorney levels 1.1 to 4.6.
- Review attorney attrition and modify factor if warranted.
- Update the annual rate for non-legal professional salaries by the COLA used for county salaries.
- Update the annual rate for clerical salaries by the COLA used for county salaries.
- Re-compute the amount of FICA commensurate with the salary amount.

2. Benefits



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- Update the amounts for industrial insurance and unemployment insurance by the current market rates.
 - Apply the annual inflation rate experienced by the King County Flex Benefit plan to the current per FTE amount (less amounts for industrial insurance and unemployment insurance).
3. Direct Overhead
- Apply the county COLA to the current rate per attorney and staff FTE.
4. Direct Overhead – Mileage
- Apply the annual inflation rate experienced by the King County mileage rate to the current per attorney rate.

IV. Brief Summary of Senior Parity Study

In 2006, Johnson Human Resources Consulting was retained by King County Human Resources Division to conduct a study of senior attorney equivalence and proportion for the purposes of parity for public defense contractors (see Appendix B). Two key recommendations resulted from the study:

- The study recommended that the funding Model “. . . should be revised to utilize the Senior Public Defense Attorney III level. The Senior Deputy Prosecuting Attorney IV and V jobs are involved in a variety of administrative areas such as strategy, planning, evaluating, controlling and related areas within the Prosecuting Attorney’s office. These assignments are often not related to public defender cases or areas.”
- The study recommended that the distribution of Senior I, II and III level defenders in the Model should be equal to the proportion of Senior I, II and III prosecutors. Specifically, 18 percent of the seniors in the Model should be level III, 34 percent should be level II and 48 percent should be level I. The study concludes that this redistribution would “. . . reflect reasonable parity with similarly situated jobs in the Office of the Prosecuting Attorney at the I, II and III levels.”

The King County Executive forwarded a request for a supplemental appropriation to the council to implement the recommendations of the study, which the council approved. The supplemental budget appropriation included funds in the amount of \$52,742 to implement the results of the study, contractually effective January 1, 2007. The calculation of the supplemental was based upon the actual number of senior positions in the 2007 Model (39.75 FTEs). The proportional distribution among senior levels in the Model will follow the study recommendations:

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At that time the Executive also requested and the Council approved a supplemental appropriation to add \$132,099 to add one percent to the Kenney scale for PD level defenders in the Model to mirror a recent PAO increase.

V. Independent Technology for OPD Contractors: Situational Analysis and Recommendations

Another significant policy decision in 2007, with implications for future funding, was a consideration of the existing dependence of contractors on King County for Wide Area Network (WAN) access to case records. For this project report, completed by MTG Management Consultants, L.L.C in January 24, 2007 (see Appendix C), the scope included investigation of the current capabilities of the four contractors and alternatives for moving the contractors off the KC WAN. The analysis of both the current capabilities and the alternatives examined the following areas:

- Applications and functions supported
- Network connectivity
- Service levels
- Licensing and hardware
- Organizational Model
- Key policies
- Financial impacts

Major findings from the study include the following:

- Constraints on the access to Electronic Court Records (ECR) information are based on policies meant to protect confidential data of litigants. The court has limited ECR online access to cases filed after November 2004 in an effort to protect confidential litigant information that is maintained in ECR for cases prior to that date. This is an automated manifestation of local court rules.
- OPD contractors have been given broader and less costly access to ECR than what is provided to other defense counsel, resulting in some cost efficiencies. The court has not constrained access or charged fees to county agents using ECR. This has included OPD contractors. The court and clerk's office planned to revisit these policies, rules, and fees for ECR in 2007 to consider, among other things, revising the fee structure.



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- OPD contractors have historically been provided IT resources through varying combinations of in-kind provisions and expense allotments. It is not clear what IT resources are covered in the IT expense allotment and what should be directly provided.
- Some of the information and services needed by the OPD contractors are available via the Internet. Other records and information required by OPD contractors are not all included in the web based electronic court records, such as sealed dependency files and cases filed before 2004.

Major recommendations from the study:

MTG Management Consultants developed a basic course of action for OPD, given the findings above and the objectives for moving the contractors off the KC WAN. This approach attempts to maximize the benefits to OPD and the contractors while minimizing costs.

1. Maintain the Status Quo Initially – OPD should maintain the status quo as the court revisits its ECR policies, rules, and fees. The contractors remain directly connected to the KC WAN. Access would be unrestricted. Electronic Court Records (ECR) Viewer would be accessed directly over the internal network. District Court Information System (DISCIS), Superior Court Management Information System (SCOMIS), Juvenile Court Information System (JUVIS), and Jail Locator would be accessed through the King County Wide Area Network (KC WAN) to the public Internet. Some contractor employees would utilize county e-mail services. Some contractors would use the KC WAN for backups, local applications, and file transfers.
2. Contact Superior Court management of ECR to discuss the access needs of the contractors and cost recovery. Discuss how to effect the appropriate cost-sharing arrangements.
3. Once the court has set policy and fee structure for ECR, OPD should implement the internet based model. It should transition all contractors to support their own Internet access, access to internet based applications (MCIS, JIS, ECR, etc.) e-mail, and directory services. It should work with King County IT and the contractors to decommission the current KC WAN connection and arrange a protocol to synchronize e-mail directories.

Internet-based approach

Under the internet-based approach, the contractors would access King County and the State of Washington Administrative of the Courts (WA AOC) applications via the Internet, and each contractor would be responsible for obtaining e-mail services. The contractors would obtain their own Internet connection and would independently establish relationships with the application providers to gain access to county and WA AOC application providers. Many of



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the capabilities currently provided by the county to the contractors are available via the Internet. The notable exceptions are:

- E-Mail – While one of the contractors is currently provided with King County e-mail accounts, this contractor would be required to provide its own e-mail services. This is currently being done by three of the four contractors.
- ECR Online – Limited access to court records is available over the Internet. These limits would be consistent with the local rules and policies of the King County Superior Court, but is inadequate access for public defense work.

A Virtual Private Network (VPN) -Based approach is the other alternative MTG Management Consultants explored but did not recommend as a first choice alternative to the status quo. It eliminates direct access to King County applications. KC WAN connections to each contractor would no longer be needed. Access to the ECR Viewer application would be provided by a VPN, which would require authentication and be restricted to the ECR Viewer application. Access to other required applications would be provided through an Internet connection established by the contractor.

Implementation of any of these recommendations have not been instituted due to overall budget concerns.

VI. Technical Adjustments Made in the Development of the 2009 Model

“... data shall include, but not be limited to, information on caseload, staffing and calendaring of cases for felony, complex felony, juvenile, misdemeanor, involuntary treatment, persistent offender and dependency cases.”

According to council Motion 12160, the Model must be fully updated for funding after three years. The 2009 budget was the first year for such an update.

The 2009 Executive Proposed Budget included the following updates, technical adjustments, revisions, and other changes to the Model.

Updates

1. Used a 6 percent cost of living adjustment (COLA), reduced to three percent by Executive Budget contra.
2. Adjusted attorney levels to maintain salary parity with the PAO. See part VII, section D of this report.
3. Updated rental rate per square foot for contractor offices, effective July 1, 2009.



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4. Updated square footage of contractor office space, per the executive's 2004 proposed county space standards.

Technical adjustments

5. Corrected formula error in direct overhead.
6. Reduced training funds for paraprofessional support staff for cost savings.
7. Eliminated mileage for paralegal staff as the Model does not include coverage.

Revisions

8. Adjusted clerical level to 0.10 clerks per attorney.
9. Used Executive's 2004 proposed county space standards for investigators instead of City of Seattle space standards, version 1.2000.
10. Revised Model administrative and indirect overhead rates to use the 2007 rates of administrative/overhead costs to total direct expenditures, rather than the 2003 rate (increase administrative from 8.09 percent to 8.60 percent, indirect from 4.72 percent to 5.35 percent) to account for business process changes since 2003. (See Appendix D) Consistent with the Model methodology and in agreement with the contractors, this report includes a budget and Model revision utilizing 2008 data for the administrative and indirect overhead rate. The revised rate would be an administrative overhead rate of 7.60 percent, and indirect overhead rate of 4.49 percent. See section VIII, Summary of Costs.
11. Revised Model benefits costs based on 2007 actual benefits costs per contractor Full Time Equivalents (FTE), instead of 2003 benefits costs per contractor inflated by the benefit rate increase experienced by the county as in the past. (See Appendix E. See also section VII.H for updated recommendations.)

Other Changes

12. Reduced felony and misdemeanor case projection by 8 percent.
13. Reduced felony cases by amount projected by the PAO related to the changes in the Filing and Disposition Standards.
14. Increased misdemeanor cases by amount projected by the PAO related to the changes in the Filing and Disposition Standards.

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15. Added Expedited felony calendar representation and reduced misdemeanor caseload by 2,900 misdemeanor credits for new Expedited felony cases.
16. Increased Involuntary Treatment Act (ITA) caseload in agreement with Mental Health, Chemical Abuse and Dependency Services Division (MHCADSD), which provides funding for these cases.
17. Partially funded Becca cases with Superior Court state Becca grant funding, with six months General Fund "lifeboat" of \$90,000.
18. Increased complex felony caseload.
19. Reduced assigned counsel budget based on caseload projection.
20. Reduced expert witness budget based on needs forecast for ITA.

VII. Public Defense Proviso Workgroup

"... office of public defense shall work collaboratively with the nonprofit defense corporations and the King County Bar Association to complete the report. ..."

DCHS established a schedule of two-hour meetings with contractor directors and deputy directors twice a week, beginning on December 22, 2008. A complete listing of the workgroup members is attached as Appendix F. At the first meeting, the contractors brainstormed a list of issues related to the Model and contract related issues. The issues were discussed in subsequent meetings (see Appendix G), and are summarized below.

The King County Bar Association (KCBA) was contacted, both by letter (see Appendix H) and by direct contact between the King County Public Defender with the KCBA Executive Director. After discussing the various tasks, subject matter and timeline for the report, KCBA indicated that it would not be able to participate directly in the workgroup meetings. The KCBA requested a draft of the proviso report be provided for review and discussion, and indicated that it would provide feedback on that draft report.

The Public Defender attended the January 22, 2009 KCBA board meeting and presented a brief summary of the workgroup's efforts. The KCBA noted that the timelines necessary for report submission may limit a thorough written response, but the KCBA may offer further written comment at a later date (See Appendix I).

Issues discussed in workgroup meetings December 22, 2008 through January 29, 2009:

- A. **Clerical staffing levels**
 1. Statement of the issue



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This issue was discussed in the December 23, 2009 meeting. The 2009 Executive Proposed Budget reduced the clerical staffing level from 0.25 per attorney to 0.10 per attorney to achieve budget savings. The lower level is seen by contractors as inadequate. OPD's examination of contractor spending for 2007 showed actual clerical ratios at 0.18 per attorney and 0.38 non-legal professional staffing per attorney.

While the Model does not use the term "Legal Assistant", WSBA Standard Seven of the Public Defense Standards says the ratio of "Legal Assistants" to attorneys should be 1:4 (0.25 per attorney). However, "Legal Assistants" is not defined. WSBA Standard Seven also says that there should be "adequate numbers" of "investigators, secretaries, word processing staff, paralegals, social work staff, mental health professionals and other support services, including computer system staff and network administrators." The standard also calls for access to interpreters. The standard allows fewer Legal Assistants if the contractor has access to word processing staff or other additional staff performing clerical duties. See Appendix J.

OPD interprets "Legal Assistants" as paralegals, which are included in the Model's 0.5 per attorney ratio funding for social workers, investigators and paralegals. "Clerical" would then be included in the standard as part of "adequate numbers" (i.e. without a specific ratio).

On the other hand, the contractor agencies interpret "Legal Assistants" as clerical staff, which are funded in the Model at 0.25 per attorney. The other non-legal professional funding in "adequate numbers" would include investigators at 0.25 per attorney (per WSBA Standard Six) and "adequate numbers" of "investigators, secretaries, word processing staff, paralegals, social work staff, mental health professionals and other support services, including computer system staff and network administrators."

2. Options for addressing the issue
 - a) Set the clerical ratio at 0.1 per attorney, as proposed in the 2009 Executive Proposed Budget.
 - b) Set the clerical ratio at 0.15 per attorney.
 - c) Set the clerical ratio at 0.20 per attorney.
 - d) Set the clerical ratio to 0.25 per attorney.

3. Contractor input

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The Model has provided 0.25 FTE clerical support staff. A reduction is not justified by any analysis of the amount of clerical work currently required or likely to be required in expectation of additional work once electronic filing is required, work that can most economically be done by clerical staff. The problem with using actuals to justify cutting contractor budgets in this area is that contractors are stretched to use their funding to accomplish the work and some have either underfunded this area in order to re-allocate these dollars or the current allocations do not cover costs for non-professional staff so staffing decisions are based on available funding for this staff category. Thus, the clerical area is in fact understaffed for some contractors and to take away funding will only institutionalize an inadequate clerical staffing. Clerical personnel are critical to the contractors' work – there is considerable filing and paperwork to deal with these cases and this is an area that should not be cut. In addition, electronic filing which will start in July will shift even greater responsibility to the contractor clerical staff while saving 2009 money for the court staff. This is not the time to cut clerical funding. Contractors expressed willingness to provide information detailing duties performed by clerical staff beyond a general description of opening and closing case files, checking discovery and various data bases for conflicts, transcription, and scanning/archiving files.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option c: set the clerical ratio at 0.20 per attorney, at an increased cost of \$459,810 over the 2009 Executive Proposed Budget. This level of funding exceeds the average actual staffing of the contractors and therefore provides the contractors with some flexibility in their overall budget, while also achieving some savings compared to the previous version of the Model.

B. Expedited felony calendar

1. Statement of the issue

This issue was discussed in the December 29, 2008 and January 6, 2009 workgroup meetings. The PAO revised the Filing and Disposition Standards (FADS), effective October 6, 2008, such that property crimes with a loss of value between \$1,001 and \$5,000 and drug possession cases where the amount is for personal use will be filed as expedited gross misdemeanors (also known as Expedited felonies or Expedited cases) in King County District Court (KCDC). In planning for this transition, District Court determined that it could most efficiently handle these new Expedited cases, along with existing Expedited cases, on a calendar basis. The PAO estimated that 2,900 cases, 80 per week,

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would be filed in 2009. KCDC and OPD planned for nine half-day calendars in the 2009 Executive Proposed budget, to accommodate approximately 25 persons being served each calendar.

The proposed 2009 contract which assumed Expedited felony cases would be paid on a calendar basis stated: "All Expedited felony calendars in King County District Court shall include the presence of Agency attorneys as designated...Two contractors per each half-day calendar shall be assigned for conflict purposes. Case credit is not available for Calendar Attorney assignments." The funding for calendar coverage for each of the four contractors included an allocation of 0.50 FTE attorney, 0.25 professional support staff, and 0.05 supervision, and included indirect and direct contractor overhead.

The contractors objected to the proposed approach of staffing nine-half day calendars with two attorneys and support staff, maintaining that the cases require more out of court attorney time than allowed for in the proposal because attorneys need time to review the case file and speak with their clients to ensure they understand the charges and the implications of their decisions.

Per council's direction, the extension of the 2008 contract did not include paying defense contractors on a calendar basis for Expedited felony cases. Contractors are currently being paid on a per case basis for Expedited felony cases exactly as they are for other misdemeanor cases.

The court established the first two Expedited felony calendars on October 22, 2008 and October 29, 2008. In November and December, there were two calendars per week. Starting in January, 2009, District Court began running three Expedited felony calendars. A lower than expected filing rate and a higher than expected Failure to Appear (FTA) rate has meant fewer calendars (and defense attorneys) are needed to handle the caseload. Based on appearance rate in court data and eligibility assessment and assignment data by OPD, it is estimated that no more than 1,800 expedited cases will receive a public defender in 2009. District Court has indicated that it will evaluate how it is handling the Expedited felony calendars once more data become available in the March to May time period.

As the data indicate, the Expedited felony case calendars are still in a start-up phase. OPD and the contractors are working with the PAO and KCDC to navigate the start-up challenges of the new system. For example, in late October 2008, a notice to defendants to contact OPD for an attorney was written by OPD in English and Spanish, reviewed and copied by PAO, and inserted by KCDC in each summons envelope prior to mailing.

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2. Options for addressing the issue

- a) Fund Expedited cases on a calendar basis with two 0.5 FTE contractor attorneys per calendar, 0.25 support staff, 0.05 supervisor, and overhead as in the 2009 Executive Proposed Budget.
- b) Fund each contractor for 1.0 FTE attorney, 0.50 professional support staff, and 0.10 supervisory staff, with indirect and direct contractor overhead, doubling the staffing in the 2009 Executive Proposed Budget.
- c) Continue to assign individual Expedited cases to contractors and provide misdemeanor case credits.

3. Contractor input

The contractor's January 5, 2009 letter to OPD confirmed that they are "willing to accept OPD's proposed 'calendar' funding for these cases if:

- Each calendar position has an annual caseload of 450 Expedited cases. For the five month contract extension this would be 187.5 cases per calendar position. Reviews will continue to be treated as they are under the 2008 contract.
- Should a calendar attorney exceed the caseload, funding for additional attorney resources will be increased proportionately."

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option b, which doubles the funding provided by the 2009 Executive Proposed Budget. Each contractor should be funded for 1.0 FTE attorney, 0.50 professional support staff, and 0.10 supervisory staff, including indirect and direct contractor overhead starting July 1, 2009, but only if the court is consistently scheduling eight or nine weekly Expedited felony calendars. If fewer calendars are regularly scheduled then a scaled FTE approach to calendar contracting would be implemented, providing two FTE attorneys per scheduled calendar. Increasing the number of attorneys staffing the calendars will provide the defense attorneys with additional time to meet with clients out of court.

The financial impact of this recommendation is equal to the case credit costs for 1,800 expedited felony cases, which is the projected number of cases to receive



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a public defender in 2009 based on the first four months of data. This staffing level and number of cases is consistent with a case credit workload of 450 in misdemeanor case type, per contract standard. Calendared case reviews are part of calendar duties. OPD will work with the court and the contractors on an ongoing basis to evaluate the calendar assignment structure based on case credit workload data and attorney experience managing cases.

If the District Court holds nine weekly calendars, as envisioned in the Executive Proposed budget, the annual impact of this recommendation is \$486,561 over the 2009 Executive Proposed Budget.

C. July 1, 2009 expected electronic filing changes

1. Statement of the issue

This issue was discussed in the December 29, 2008 meeting. King County Department of Judicial Administration (DJA) has mandated electronic filing (E-Filing) of many documents starting June 1, 2009. Concerns were expressed by the contractors that this requirement will add significant workload to their staff for the processing and filing of documents in this fashion. Concerns were also noted as to coordination with other criminal justice agencies, especially the PAO, for purpose of filing and service of documents. The description of the procedures to use for the new E-Filing process can be found on the E-Filing Frequently Asked Questions section of the posting on the King County DJA Web site. (See Appendix K.)

DJA has provided OPD a synopsis of the process and work steps required at the user level. Rather than printing a paper version of a document and then filing in person at the courthouse, the user "prints to" a .pdf formatted document which is then filed electronically. Free software is available to add this "print to .pdf" process to the user's printer dialogue box. DJA provides free training to anyone who will use the system. DJA noted that planned updates to the E-Filing process will not impact the user end steps (see Appendix L).

Filing electronically will save the contractors from having to print out and deliver documents to the courthouse for filing and allow contractors to keep some documents in electronic form only. This change is another step in an on-going effort by DJA to minimize paper files and maximize how efficiently it processes court paperwork.

2. Options for addressing the issue

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- a) Make no changes in the Model, but monitor the process for problems as E-filing is put into practice.
 - b) Determine whether any increase in contractor attorney or staff workload will result from the changes, and make any appropriate adjustment to the Model that may be indicated in 2010.
 - c) Leave clerical staffing ratio at 0.25 to account for anticipated workload increase due to electronic filing.
3. Contractor input

Concerns were expressed that this would be a big process change for the contractors, and that such changes are never seamless. Concerns were also raised that individual prosecutors may be able to opt out of the filing process or accepting service electronically, which will cause logistical problems for the contractors to keep track of. Potential for increased workload for staff and attorneys was also noted. Leave clerical staffing ratio at 0.25 to account for anticipated workload increase due to electronic filing.

There will be some increase in staff time needed to create pdf documents and a need to train staff and attorneys how to use the software. The larger staff demand will come when filing documents, usually attachments to pleadings that the public defense contractors have not created and which will have to be scanned and saved before converting them to pdf format. It is not clear what demand for expanded electronic storage electronic filing will also create.

Several of the contractors have arranged for staff to attend DJA training sessions. These trainings have raised concerns for the contractors because they file a large volume of documents and a large number of attachments to documents that will have to be separately scanned. The contractors have stated that the process will add a significant level of work to the attorney or staff workloads based on the volume of the practice, the limitations on bulk filing, and the need to scan documents not created "in house" that will be attached to pleadings.

The contractors anticipate clerical workload increase as a result of E-filing requirements (Appendix M). The contractor preference is to leave the ratio at 0.25 clerical staff per attorney.

4. Recommendation by DCHS/OMB

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DCCHS/OMB recommends option a: make no changes in the Model, but monitor the process for problems as E-filing is put into practice. There is a lack of sufficient data to demonstrate significant increases in workload. Further, it is likely that once contractor office staff is trained on the new system, any additional work associated directly with E-filing will be offset by savings due to handling fewer paper files. Nonetheless, this is a significant process change and OPD will continue to monitor the process for problems and will assist with troubleshooting as it is put into practice.

D. Attrition rate formula and impacts on attorney salary parity

1. Statement of the issue

This issue was discussed in the workgroup meetings on December 22, 23 and 30, 2008. In 2006 through 2008, the Model applied an attrition rate formula for attorney salary computations. This rate was intended to reflect the contractor's level of hiring and terminations. That is, on the average, as attorneys left the contract agencies, they are replaced with attorneys lower on the pay and seniority scale. The Model also includes an automatic step increase for attorneys. The combination of the attrition rate formula and the step increase formula in the Model inadvertently caused most attorney positions to move up to 4.6 or the top of the Kenny scale. This upward drift resulted in public defender funded attorney salary levels being out of alignment with funded PAO salary levels, with public defender salary level funding higher, on average, than the PAO salaries for the same range of salary levels. The 2009 Executive Proposed Budget was based on a realignment to the actual positions in the PAO as of July, 2008.

2. Options for addressing the issue

- a) Maintain the 2009 Executive Proposed Budget realignment of the attorney salary levels using actual positions in the PAO as of July 2008. Appendix N provides spreadsheet depiction of this option.
- b) Continue with Model process of attrition rate formula and step without realigning salary levels to match the PAO.
- c) Realign public defense attorney salary levels with PAO salary levels each year using the PAO's January Payroll Reconciliation file. Appendix O illustrates this option.
- d) For succeeding years following 2009, use the attrition rate formula and step increase process for the next two years, then realign at the three year Model revision.

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3. Contractor input

Contractors generally wanted PAO budget positions to be reflected in attorney salary parity calculations. The overall manner of realigning the public defender and prosecutor salaries was agreed to using the point in time of the January payroll reconciliation. Contractors also agreed that it would be most accurate to realign the attorney salary scales annually at that time, rather than using a combination of this realignment and the attrition rate and step increases in the Model.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option c: realign public defense attorney salary levels with PAO salary levels each year using the PAO's January Payroll Reconciliation file. In effect, this eliminates reliance on attrition rate and step increase calculations as provided in the existing Model. It will also automatically incorporate that year's COLA into the Model.

E. Attorney salary levels beyond the current public defender scale (addition of Senior IV and V level attorney scale)

1. Statement of the issue

This was discussed in the workgroup meetings on December 22, 23 and 30, 2008. This issue includes two components: 1) whether to include PAO Senior Attorney levels Senior IV and V for the purposes of the parity calculation, and 2) when and how to align PAO and defense attorney salaries.

A review of the Senior Attorney positions IV and V and input from the PAO, confirmed that Senior Attorney positions IV and V do carry full caseloads, with duties that are not readily distinguishable from the public defender attorney duties. Therefore, these positions should be included in parity calculations.

Calculations regarding precise staffing levels at the PAO are complex. In preparing the 2009 Executive Proposed Budget, OPD staff used July 2008 PAO payroll data to determine how attorneys were spread among seniority levels and the average salary of criminal attorneys. These were the best data available at this time.

There was much discussion among OMB, OPD, and defender contractor staff as to whether it was more appropriate to use actual or budgeted positions for the calculation and at what point in time to gather these data. All parties concluded that using the January Payroll Reconciliation file is most appropriate as it is the

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point in time when actual and budgeted positions are most closely in alignment. This timing is possible with the July to June contract schedule, but would have to be re-evaluated should another contract schedule be implemented.

2. Options for addressing the issue
 - a) As per the 2009 Executive Proposed Budget, do not include PAO Senior levels IV and V in the Model for parity.
 - b) Include PAO Senior levels IV and V in the Model for parity.
 - c) Use July actuals for the parity calculation.
 - d) Use the January Payroll Reconciliation file for the parity calculation.
3. Contractor input

Contractors generally wanted PAO positions levels IV and V to be included in attorney salary parity calculations. The overall manner of realigning the public defender and prosecutor salaries was agreed to, with additional requirements of using the budgeted positions at the PAO, including in the calculations PAO Senior levels above Senior III, and using the point in time of the January payroll reconciliation by the Budget Office. Contractors agreed with realignment of the attorney salary levels annually, rather than using a combination of realignment and attrition rate and step increases currently in the Model.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends options b and d: include PAO Senior Attorney levels IV and V and use the January Payroll Reconciliation file to realign salaries for parity.

See Appendix P, which provides a spreadsheet depiction of the application of these recommendations for 2009.

The combined cost of these recommendations in comparison to the 2009 Executive Proposed Budget is an increase of \$1,529,402. Approximately 10 percent of this cost increase is attributable to the addition of Senior IV and V levels; the balance is attributable to COLA, Merit, and promotions at the PAO as of January 2009, compared to July 2008.

F. Partial funding of FTEs**1. Statement of the issue**

This issue was discussed in the December 23 and 29, 2008 meetings. OPD funds contractor attorney staffing on the basis of case credits, according to a caseload standard set forth in the contract. OPD divides the projected caseload among the contractors using an agreed upon calculation. For any individual contractor, the calculation does not always result in funding all full-time equivalent (FTE) attorneys for a contracted case area. For example, the caseload standard for felonies is 150 case credits per attorney per year. If a contractor is allocated 1,500 felony credits, OPD will provide funding for ten FTE felony attorneys. However, if a contractor is allocated 1,260 felony credits, OPD will fund 8.4 FTE felony attorneys, creating a 0.4 partial FTE. Contractors have found difficulties in paying salary, benefits and overhead, particularly rent, for a partial FTE. Generally, the contractors indicated that they have to hire an FTE to accomplish the partial FTE work, particularly since they are not permitted to add the partial caseload to another attorney's work. To do so would violate the caseload limits of the contract.

2. Options for addressing the issue

- a) Round all Model generated partial FTEs up to 1.0 FTE within each contract.
- b) Round up to 1.0 FTE for any partial caseload 0.6 and above and round up to a 0.5 FTE for any partial FTE under 0.5 at year end reconciliation, thus allowing for partial FTEs in increments of 0.50.
- c) Round up to 1.0 FTE for any partial caseload above 0.5 and round down for any partial caseload below 0.5 at year end reconciliation.
- d) Round the total caseload estimate for the system to full FTEs, then adjust each caseload for each contractor up or down so that no partial FTEs are created. Annually, this could result in a fraction of a percent adjustment of a contractor's percentage of a caseload area.

3. Contractor input

Contractors have concern that merely changing the case filing projection would not solve the problem. Although rounding up would staff the partial caseload adequately, rounding down may result in the contractor being in violation of contract caseload standards. Rounding down would cut funding for FTEs, resulting in contractor loss in revenue to cover partial FTE employee benefit expense in some cases. OPD should round up for every caseload area for each



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contractor. The contractors are required to take all assigned cases, and causes problems when more cases are assigned than are projected in the contract. The contractor must staff the cases, but does not have funding until quarterly reconciliation.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option d: round the total caseload estimate for the system to full FTEs, then adjust each caseload for each contractor up or down so that no partial FTEs are created. Annually, this could result in a fraction of a percent adjustment of a contractor's percentage of a caseload area. Because case filing projections for each contractor in each case area are estimates they can easily be adjusted to result in full FTEs. This will allow each contractor to start the contract year with only full FTE attorneys funded. For example, one contractor had 2,066 felony credits allocated for the 2008 contract. This resulted in 13.77 attorneys. If OPD had adjusted this felony credit allocation within a reasonable case projection to 2,100, the contractor would be funded for 14.0 FTE attorneys. Another contractor had a total felony credit allocation of 3,746. This resulted in 24.97 FTE attorneys. Adjusting the felony case credits to 3,750 would have resulted in 25 FTE attorneys. Similarly, if a case area credit allocation resulted in 13.44 FTE attorneys, the contractor would receive an adjusted allocation to a caseload equivalent of 13 FTE attorneys.

This recommendation would increase the number of system-wide attorneys by 1.17 FTE from the 2009 Executive Proposed Budget. The cost of this increase is \$207,000, assuming the recommendations in Sections D and E above are adopted, and current caseload projections.

G. Professional staff salary review (social worker, investigator, paralegal)

1. Statement of the issue

This issue was discussed in the December 23, 2008 meeting. Contractors consider the current non-legal professional staffing salary levels are inadequate to compete with private bar attorney law firms that are willing and able to compensate at a higher level.

The Model bases the salaries for these staff on a market survey that includes mostly non profit or governmental entities and King County, where comparable positions exist. The amount funded is calculated as a weighted average and all three categories are funded at a single level. The survey was conducted in 2005 for the 2006 Model. The amount in the 2006 Model was then inflated annually by COLA to arrive at the number included in the 2009 Executive Proposed

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Budget. OPD conducted a market survey in 2008. using the same comparison groups as were used in the 2005 survey. The market survey conducted in 2008 showed that the Model funded non-legal professional staff at a rate higher than the market average.

The following organizations were surveyed both in 2005 and in 2008.

- King County Executive Branch
- King County Prosecuting Attorney
- Pierce County
- Washington State
- Salary.com
- Snohomish County Public Defender
- University of Washington.

See Appendix Q for survey results.

2. Options for addressing the issue

- a) Utilize the existing Model compensation level as included in the 2009 Executive Proposed Budget.
- b) Utilize compensation level based on a 2008 survey of the comparable public market, using existing Model methodology.
- c) Match salary levels to private bar compensation levels.

3. Contractor input

Contractors raised the issue that they are not offering competitive salaries for people within the general market, but within a specific market. They also said that a social worker in another non profit or King County is not the same market, as the defenders require a different type of training. They suggest a survey of other private legal firms is more appropriate. Other than paralegal staff at PAO, there are no comparable positions with in King County. The 2008 PAO average salary for paralegals is \$47,000 and the Model salary funding is \$51,000.

The contractors provided an informal sampling of private bar criminal defense firms, showing an average paralegal salary of more than \$57,000. The contractors also provided King County and DSHS social worker salary scales



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comparable to the requirements of the contractors' social workers, with mean salary ranges well above the Model salary funding of \$51,000. See Appendix R.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option b: utilize current Model compensation level based on 2008 survey of the comparable public market, consistent with the 2005 Model methodology, for a reduction of \$1,209 from the 2009 Executive Proposed Budget. The non profit and government sector is the most appropriate market for comparison for the defender contract agencies, which are non profit entities that contract with government entities.

H. Benefits calculation

1. Statement of the issue

This issue was discussed in the December 30, 2008 meeting. The original Model determined the benefits rate per FTE employee by calculating a weighted average of all actual contractor employee benefits in 2003. This amount was then adjusted annually by the King County benefit inflation rate. This process was used for 2006 through 2008 benefits determination. The 2009 Executive Proposed Budget updated the basis for the weighted average by using all actual contractor employee benefits in 2007 as the new base rate, from which future versions of the Model would apply the county's annual benefits inflation rate, with a recalibration of the base every three years. There are three issues raised by contractors.

- Because they are paying less in benefits due to available resources, using the actual expenditures underfunds the benefit component.
- The county, being a large organization, has a benefit inflation rate that is much less than smaller public defense contractors.
- The Model provides partial FTE benefits on partial FTEs, where some contractors provide some partial FTE full benefits.

2. Options for addressing the issue

- a) Leave the methodology as is applied in the 2009 Executive Proposed Budget. The benefits rate per FTE was updated to 2007 costs to determine the weighted average, with annual adjustments by the King County benefits inflation rate for the next three years of the Model.
- b) Set the base to 2007 actuals and use an inflation rate experienced by non-profit organizations similar in size to the contractors.

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- c) Reset the benefit rate to 2008 actual costs, to determine the weighted average, with annual adjustments by the King County benefits inflation rate for the next three years of the Model.
- d) Change from county stabilized rate to contractor's actual inflation rate.

3. Contractor input

The contractors expressed concerns that the 2007 year data included an anomaly in that one contractor's health insurance provider used repressed rates in 2007, which were substantially increased in 2008, thus not reflecting the true market cost. A preference was expressed to use the 2008 actual benefits as a base, which the contractors agreed to provide to OPD as soon as possible.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option c: reset the benefit rate to 2008 actual costs. As of February 6, 2009, all contractors have provided OPD with their 2008 actual benefits costs. Option c leaves the methodology as was applied in the 2009 Executive Proposed Budget, but resets the benefit rate to 2008 actual costs to determine the weighted average, with annual adjustments by the King County benefits inflation rate for the next three years of the Model. After three years, the base would be recalibrated based on actual benefit costs.

The cost of this recommendation is \$215,424 in comparison to the 2009 Executive Proposed Budget.

I. Case weighting of general felony caseload

1. Statement of the issue

This issue was discussed in the December 29, 2008 meeting and the contractors presented a joint letter to OPD with discussion at the January 6, 2009 meeting. (See Appendix S.)

Although cases are broken out in the Model by general case type (e.g. felony, misdemeanor, etc.), within each general case type are cases of varying levels of complexity. Case credit load standards are expressed in the Model for cases within that case type generally. Concern was expressed that the current system of crediting cases does not accurately or uniformly provide similar credits for cases of similar levels of complexity across the entire system, and further, may impose too heavy a workload on felony attorneys. This issue has been exacerbated as many of the simplest levels of cases are now siphoned off by the PAO filing standards (FADS) modifications via Expedited felony case



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procedures. This leaves a higher concentration of more serious felony cases for felony attorneys to handle, without any modification of the case credit load per attorney within the Model. The concept of "averaging" (a few serious cases averaging out with higher mix of less serious cases) within a caseload is impacted by the PAO's FADS changes. As the concentration level of complexity increases, concerns exist as to the ability of attorneys to continue to effectively represent the clients assigned, and the ability of the contractors to retain skilled, experienced felony attorneys.

The current Model and public defense contracts provide weighting in certain areas: aggravated murder and death penalty cases are compensated on the basis of assigning a full time attorney (or two FTE attorneys in cases in which the death penalty is being sought) persistent offender cases (compensated by a credit for every 12.1 hours attorney time), and murder cases (two credits assigned at the time of assignment). Cases in which the contractor believes the level of workload is extraordinary are subject to a request for extra credits to be approved by the Public Defender.

A case weighting system can be instituted without changing the overall caseload standards for defense counsel. This would entail some level of increased credits being given to certain categories of cases of higher seriousness level, allowing the contractors better flexibility in assigning caseloads to moderate for increased complexity of cases. The details and logistics of such systems in other jurisdictions vary widely, depending on which cases are involved and what manner of assigning additional credits is used. Such systems can be highly complex and sophisticated, and conversely, some can be simplified and highly automatic.

For the 2008 public defense contracts, OPD proposed change in reimbursement methodology would bring persistent offender case payment procedures in line with the payment procedures for other felony cases. The Office of the Public Defense's proposal was to give three felony credits when a persistent offender case is assigned, and contractors could apply for extraordinary credits as appropriate for a specific case. King County Ordinance 15975 directed OPD to maintain the status quo payment procedure for persistent offender cases and submit a report to Council. This report was submitted to council in 2008. Council action on that report is likely to have implications for other high cost case contract terms.

In a January 5, 2009 letter to the Public Defender (Appendix S), the contractors proposed a credit weighting pilot for serious felony cases which is described in the contractor input section below.

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2. Options for addressing the issue
 - a) Pilot a project of the contractor proposed crediting system. At the January 6, 2009 meeting the contractors agreed to amend their proposal with a more definitive charge list. A shadow tracking of credits (additional credits may be requested for difficult client cases under current contract rules) to determine the extent of the new case difficulty range and the case credits requested and provided and use this data to establish a "pilot project" for implementation in 2010.
 - b) Immediately establish a workgroup of criminal justice system stakeholders to more fully address and follow-through on the options listed above. OPD will conduct a review of affected case types to determine the weighting dynamic, establishing a historic reference and future trend, and anticipated financial adjustment, if any, to the overall OPD budget. This option includes a review of contractor closed case data regarding attorney and support staff hours within given case types.
 - c) Replace the current credit based system with a case area specific price based system. This option would require intensive study and negotiation, as well as a change to one of the fundamental tenets of the contracts.

3. Contractor input

The contractors are concerned that the contracted standard 150 felony caseload no longer includes a mix of low and high end filings due to the PAO filing standard changes: "filing most felony drug cases as misdemeanors, leaving a significantly higher proportion of the most serious cases in the caseload mix. In 2006 through 2008, approximately 40 percent of all felony cases filed were drug cases, or almost 65 of the felony attorney's 150 assigned cases. In the last three months of 2008, felony drug filings dropped to less than 20 percent of all felony filings. An attorney can now expect to represent clients in only 30 drug cases, leaving 120 more serious cases. This is a dramatically more demanding caseload ..." The advent of mandatory minimum sentencing and indeterminate sentencing for sex crimes also increases attorney workload.

To address the need for increased attorney time in felony cases contractors propose:

- All murder cases-15 credits
- Indeterminate sex cases-ten credits

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- Cases with mandatory minimum 20 years (Arson 1; Kidnapping 1)- ten credits

If a case exceeds 220 hours of attorney time cases would presumptively receive three additional credits for every 50 attorney hours over 200 attorney hours worked. All other felony cases would be given one credit. These cases would presumptively receive 3 credits for every 50 hours of attorney time above the original, assumed 12.1 hours of attorney time.”

The contractors agreed that additional work would need to be done to sort out the details necessary to be able to implement the case weighting approach contractors proposed; however, the contractors would like more immediate relief from the current protocol of attorney written requests for extraordinary case credit.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option b: immediately establish a workgroup of criminal justice system stakeholders to fully address options to the current case weighting protocol and determine possible interim target dates for system change. OPD will conduct a review of affected case types to determine the weighting dynamic, establishing an historic reference and future trend, and anticipated financial adjustment, if any, to the overall OPD budget.

The discussion also may include interim adjustments that can be made to the credit based system, while analysis of case trends and budget implications is completed. The analysis is to establish an approach for determining case credit distribution within annual system total budgeted case credits. The discussion may result in an adjustment to extraordinary case credit application guidelines.

J. Aggravated/complex reimbursement levels

1. Statement of the issue

This issue was discussed in the January 6, 2009 meeting. The issue was whether an additional level of compensation should be provided for attorneys representing clients charged with Aggravated Murder, including those for which the PAO is seeking the death penalty. These cases comprise the complex case category in the Model.

Currently, contractors are compensated for cases assigned in this case area with up to 12.5 felony credits per month per attorney assigned (one FTE felony attorney per month), and up to 25 felony credits per month for cases in which



the death penalty is being sought (two FTE attorneys per month). Built into the credits provided are funds for training of counsel and support staff, including investigators.

The controlling court rule, SPRC 2, sets the requirements for appointment of counsel in aggravated murder cases in which the death penalty applies. The requirements do not apply to cases in which the death penalty is no longer possible. The Supreme Court committee on qualifications maintains a list of attorneys who "meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience...." SPRC 2. "All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital casehave five years' experience in the practice of criminal law, be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case." SPRC 2. SPRC 2 does not mandate that counsel be assigned to these cases on a full time basis.

2. Options for addressing the issue

- a) Compensate as currently provided for in the Model and the 2009 Executive Proposed Budget.
- b) Provide for additional compensation by modifying the attorney salary parity methodology to include Senior IV and V level of attorneys (see section E, above, for more detailed description).
- c) Provide additional compensation beyond the levels provided for by the Model, even if Senior IV and V level of attorneys are added to the Attorney Salary parity method.

3. Contractor input

Contractors prefer that credits for this particular caseload be compensated at a level higher level than that of the credits in the felony caseload generally. The contractors noted that SPRC 2 required higher level of qualification for counsel than for felony attorneys generally. It was noted that death penalty qualified attorneys have to maintain their level of training by attending trainings specific to death penalty representation. At least one contractor wanted to expand the Model case category of "Complex" to apply to cases beyond Aggravated Murder cases.

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4. Recommendation by DCHS/OMB

DCHS/OMB recommends option b: provide for additional compensation by modifying the attorney salary parity methodology to include Senior IV and V level of attorneys. The concept of the Model provides for a full range of levels of attorneys comparable to the PAO. Assuming that the salary ranges and percentages of attorneys is comparable to the PAO, then the contractors have a similar capacity to assign the higher level attorneys to this caseload, and compensate appropriately. Because the defender agencies are independent contractors, the county cannot require them to compensate their staff at any specific amount; however, including Senior IVs and Vs in the Model would provide each contractor the ability to compensate at a higher level for aggravated murder cases, should it choose to do so.

K. Contract variance

1. Statement of the issue

This issue was discussed in the December 30, 2008 and January 6, 2009 meetings. Public defender contracts employ a variance to determine contract completion, in terms of cases assigned in each case area. Variances are not applied to complex caseloads, but are applied to all others quarterly and annually through a reconciliation process with the contractors. Variance for felony caseloads is plus or minus 2.5 percent from the projected paid caseload; the variance for other caseloads (excluding complex) is 5 percent. This means that a contractor can be within that percentage under or over the contract at the end of the annual contract and be considered in compliance. If under contract by more than 2.5 percent or 5 percent, the contractor must remit the value of cases below the variance. If over the variance, King County pays the contractor the value of cases above the variance. The contracts require OPD to attempt to assign cases to the contractors in a manner that will keep all contractors similarly placed with regard to the variance (i.e. similarly above or below).

2. Options for addressing the issue

- a) Continue with existing contract variance methodology.
- b) Eliminate the use of variances from contracts.

3. Contractor input

Contractors claim that the use of the variance, particularly as applied to caseloads that are over 100 percent of the contracted for amount (not

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considering a variance) but otherwise within variance would place the contractor out of compliance with caseload standards, as the contractor is not funded within the contract to hire additional attorneys to whom those excess cases can be assigned.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option a: continue with existing contract variance methodology. OPD will review and analyze the appropriateness of the variance percentages. OPD will provide statistically significant data showing implications of percentages for contract terms.

The county recognizes that fluctuations in variance might marginally move caseloads per attorney above or below contract standard. This consequence shall be addressed by applying the caseload variance in contract performance reviews and does not subject the contractor to a contract material breach.

L. Deferred revenue (prepayment)

1. Statement of the issue

This issue was discussed in the December 30, 2008 meeting. Case prepayments, or what contractors refer to as "deferred revenue," is the amount paid by King County to a contractor in advance of performance. To maintain a stable funding base for contractors and predictable payment schedule for the county, one-twelfth of the annual amount of each case area is paid each month, with reconciliations at the end of each quarter. Some cases are not completed by the end of the contract year. Based on an agreed formula, OPD computes the value of work remaining and requires contractors to demonstrate they have that amount available in reserve. This is to assure that the work assigned will be completed if no future work is assigned to contractor. The formula to compute this amount is in public defense contracts. A copy of the relevant contract language follows from contract Exhibit V.IV.J.:

J. Prepayments

1. The Agency shall ensure that it has sufficient funds to complete prepaid cases assigned but not completed at the end of the Contract period. The Agency must report its calculated prepayment retention amount and cost estimate, include the method of calculation, and provide a conclusion about whether the funds available would cover all costs associated with completing the cases assigned and prepaid.

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Not having an adequate reserve shall not be cause for a material breach of contract, but may require Agency corrective action.

2. In the absence of a precise calculation of prepayments by the Agency, the County shall estimate the sufficiency of funds using the following formula:

For all felony, misdemeanor, initial dependency assignments, and juvenile offender cases assigned during October, November, and December that remain open at year-end, it is assumed that October cases are 75 percent completed, November cases are 50 percent completed, and December cases are 25 percent completed. For dependency cases it is assumed October cases are 15 percent completed, November cases are ten percent completed, and December cases are five percent completed.

The estimation shall be the result of calculating the number of open cases for each month by the corresponding percentage of uncompleted work, and then determining the sum of the uncompleted case count by the per case revenue amount to determine the sufficiency of funds.

2. Options for addressing the issue

- a) Distribute payment when each case is assigned.
- b) Distribute payment upon case closure, and an allocation for the contract start-up period could be utilized by the contractor and then reimbursed to the county at the close of the contract.
- c) Maintain the current contract terms regarding prepayments.

3. Contractor input

Contractors raised the issue that cases assigned in one year will have a different price than they would cost in the following year due to inflation of salaries and other costs. They also commented that none of the options listed above addresses the problem. The contractors are required to finish up work if the contract is not renewed, but there is no funding to do so, as payment per case credit is based on what the Model calculates as 12 months of operating costs.

4. Recommendation by DCHS/OMB

- d) DCHS/OMB recommends option c: maintain the current contract terms regarding prepayments.

M. Process for reviewing issues that impact work and funding mid-contract

1. Statement of the issue

This issue was discussed in the January 6, 2009 workgroup meeting. It was raised by the contractors as part of concerns they have regarding upcoming funding transitions that may occur between the county and the state. For example, potential changes in state dependency parents funding might bring new caseload standards and case counting mechanisms tied to use of these funds and new ways of accounting for work in this case area, e.g. "off the Model." Generally, because the state adopted standards of defense practice vary from King County's related to case counting and tracking in particular case areas, the contractors request continuing dialogue with OPD to discuss ramifications of this, if and when the county accepts state funds that may add new terms of compliance from the contractors.

Current standard contract terms anticipate this sort of change:

- Section XXV. Contract Amendments states that "Either party may request changes to this Contract. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Contract."
- Section VII. Audits, paragraph E. states in part that "Additional federal and/or state audit or review requirements may be imposed on the County, and to the extent that such requirements relate to funding that is passed on to the Agency, the Agency shall be required to comply with any such requirements. The County shall notify the Agency when requirements from funders are issued to the County."
- Section XII describes a Dispute Resolution process that the agency may initiate pertaining to County decisions regarding Contract compliance issues..."

2. Options for addressing the issue

- a) The county and/or the contractor can utilize one of the current contract options to discuss contract issues.
- b) OPD should continue monthly meeting with contract agency directors to discuss county defense services system topics.

**Response to King County Council Proviso
Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms**

3. Contractor input

Beyond established contract terms, the contractors request more regular meetings with OPD to discuss criminal justice system policy updates and changes that are likely to have impact on the services they provide to the county.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option b: OPD continue structured monthly contract agency director meetings to discuss county defense services system topics.

N. IT/County network issues

1. Statement of the issue

This issue was discussed in the December 22, 2008 and January 6, 2009 meetings. Currently, the contractors are directly connected to the King County Wide Area Network (KC WAN) with unrestricted access. Electronic Court Records Viewer is accessed directly over the internal network, as is District Court Information System (DISCIS), Superior Court Management Information System (SCOMIS), Juvenile Court Information System (JUVIS), and Jail Locator. Some contractor employees utilize county e-mail services. Some contractors use the KC WAN for backups, local applications, and file transfers. Access to court records is essential to the defender agencies, but such access is not available to anyone outside KC WAN. While it is not generally in the county's best interest to maintain the status quo for reasons of IT security and unusual access to and dependency on county systems by independent service contractors, removing the agencies from the county Information Technology (IT) systems must be done in such a fashion as to preserve access to court databases. King County DJA has provided a letter detailing possible options for contractors in being removed from the KC WAN. (See Appendix L.)

2. Options for addressing the issue

To study this issue, the county utilized MTG Management Consultants, L.L.C, which completed a report on January 24, 2007. (See Appendix C.) The report provided analysis of current applications and functions supported, network connectivity, service levels, licensing and hardware, organizational model, key policies, and financial impacts.

- a) Maintain the status quo per the 2009 Executive Proposed Budget.

**Response to King County Council Proviso
Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms**

- b) Contractors access King County and the Washington Administrative Office of the Courts (AOC) applications via the Internet, and each contractor would be responsible for obtaining e-mail services. The contractors would obtain their own Internet connection and would independently establish relationships with the application providers to gain access to county and WA AOC application providers.
- c) Contractors transition to a Virtual Private Network (VPN) - based model which would eliminate direct access to King County applications. KC WAN connections to each contracting agency would no longer be needed. Access to the ECR Viewer application would be provided by VPN, which would require authentication and be restricted to the ECR Viewer application. Miscellaneous network traffic would be eliminated. Access to other required applications would be provided through an Internet connection established by the contractor.
- d) Renew efforts to complete the transition of the contractors off the county WAN by reassessing county IT concerns and financial impacts.

3. Contractor input

In the January 6, 2009 Proviso workgroup meeting, contractors consistently expressed the opinion that they were agreeable to the option of transitioning off of KC WAN, as long as the county paid for the transition and access issues to all necessary client tracking data bases and case records were resolved.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option d: renew efforts to complete the transition of the contractors off the county WAN by reassessing county IT concerns and financial impacts. An IT workgroup should be reinstated to complete a detailed recommendation. All parties agree that the contractors should move off KC WAN; there needs to be agreement on how that goal should be accomplished.

O. Rent

1. Statement of the issue

This issue was discussed in the December 22, 2008 meeting. Rent is an area of concern because it is a fixed cost. Long term leases must be signed to provide for adequate space for staff to meet the high end of projected need, but cannot be reduced easily when caseloads decline, as happened in 2009. There is also

**Response to King County Council Proviso
Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms**

concern that while a partial FTE receives partial funding in correlation with its caseload, it requires a full FTE or person's allotment of space.

Indirect overhead costs, as well as rent, are not reconciled at year end, unlike direct costs which are reconciled at year end.

Rent was computed for the 2009 Executive Proposed Budget as follows:

- Square footage per contractor is based on projected FTEs and county space standards for each type of position. Circulation square footage of 25 percent.
- Square footage for special areas such as lunch rooms, conference rooms, storage etc is included in the calculation.
- The square footage relating to FTEs is computed on full FTEs. The partial FTEs are each rounded up to one full FTE.
- This total square footage is then allocated to downtown Seattle and Kent for the Maleng Regional Justice Center (MRJC), based on caseload.

The Model uses a three year rolling average rent for class B office space in Seattle central business district. This information is obtained from Colliers International Web site. Colliers International is a national real estate management firm.

For contractors working at the MRJC, there is limited rental space available within reasonable distance from the facility. A special rate is used that proportionately addresses the actual rate of the rental building used by three contractors.

2. Options for addressing the issue

- a) Leave as is currently identified in the Model and reflected in the 2009 Executive Proposed Budget.
- b) Use a three year average of actual caseload (2006, 2007, and 2008) and apply it annually, for the next three years, to an annually updated three year rolling average rent per square foot rate.
- c) Use a three year rolling caseload average applied to a three year rolling average rent rate.
- d) Use highest of three year caseload applied to a three year rolling average rent rate.



Response to King County Council Proviso Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms

3. Contractor input

The contractors are unable or would find it challenging to change their lease agreements as caseloads change. The contractors have long term leases and cannot shed space quickly or acquire space quickly and want the most stable option to facilitate managing their budgets. Contractors would like to include rent in the year-end reconciliation.

4. Recommendation by DCHS/OMB

DCHS/OMB recommends option b: Use a three year average of actual caseload (2006, 2007, and 2008) and apply it annually to an updated three year rolling average rent rate. Under this recommendation, OPD would continue to round up partial FTEs system-wide for the purposes of the rent calculation. The cost of this option as compared to the 2009 Executive Proposed Budget is an additional \$170,990. This option will provide the contractors with greater stability that in the current Model and cushion the impact of major caseload adjustments, such as those for 2009.

VIII. Summary of Recommendations

A. Clerical staffing levels

DCHS/OMB recommends option c: set the clerical ratio at 0.20 per attorney, at an increased cost of \$459,810 over the 2009 Executive Proposed Budget.

B. Expedited felony calendar

DCHS/OMB recommends option b: double the funding for Expedited felony calendars from the 2009 Executive Proposed Budget. Each contractor should be funded for 1.0 FTE attorney, 0.50 professional support staff, and 0.10 supervisory staff, including indirect and direct contractor overhead starting July 1, 2009, but only if the court is consistently scheduling eight or nine weekly Expedited felony calendars. If fewer calendars are regularly scheduled, then a scaled FTE approach to calendar contracting would be implemented, providing two FTE attorneys per scheduled calendar. Increasing the number of attorneys staffing the calendars will provide the defense attorneys with additional time to meet with clients out of court. If the District Court holds nine weekly calendars, as envisioned in the Executive Proposed budget, the annual impact of this recommendation is \$486,561 over the 2009 Executive Proposed Budget.

C. July 1, 2009 expected electronic filing changes



Response to King County Council Proviso Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms

DCHS/OMB recommends option a: make no changes to the model, but monitor the implementation of E-Filing.

D. Attrition rate formula and impacts on attorney salary parity

DCHS/OMB recommends option c: each year realign public defense attorney salaries levels with PAO salary levels, using budgeted positions in the PAO as part of the calculation. This should be done each year using the January Payroll Reconciliation file for the PAO. In effect, this eliminates reliance on attrition rate and step increase calculations as provided in the existing Model, as well as incorporating COLA adjustments.

E. Attorney salary parity realignment and attorney salary levels beyond the current public defender scale (the addition of Senior IV and V levels)

DCHS/OMB recommends options b and d: include PAO Senior Attorney levels Senior IV and V to and use the January Payroll Reconciliation file to realign salaries for parity to best reflect attorney salary parity between public defense attorneys and the PAO handling cases and supervising caseload attorneys.

The combined cost of recommendations for issues D and E in comparison to the 2009 Executive Proposed Budget is an increase of \$1,529,402. Approximately ten percent of this cost increase is attributable to the addition of Senior IV and V levels; the balance is attributable to increased salaries and promotions at the PAO as of January 2009, compared to July 2008.

F. Partial funding of FTEs

DCHS/OMB recommends option d: round the total caseload estimate for the system to full FTEs, then adjust each caseload for each contractor up or down so that no partial FTEs are created. This will allow each contractor to start the contract year with only full FTE attorneys funded.

The result of this recommendation is to increase the number of attorneys system wide by 1.17 FTE in comparison to the 2009 Executive Proposed Budget at a cost of \$207,000, assuming the recommendations in Sections D and E above, and current caseload projections.

G. Professional staff salary review (social worker, investigator, paralegal)

DCHS/OMB recommends option b: utilize the current Model compensation level based on 2008 survey of the comparable public market, consistent with the 2005 Model methodology, for a reduction of \$1,209 from the 2009 Executive Proposed Budget.

H. Benefits calculation

DCHS/OMB recommends option c: reset the benefit rate to 2008 actual costs. As of February 6, 2009, all contractors have provided OPD with their 2008 actual benefits costs. Option c leaves the methodology as was applied in the 2009 Executive Proposed Budget, but resets the benefit rate to 2008 actual costs to determine the weighted average, with annual adjustments by the King County benefits inflation rate for the next three years of the Model. After three years, the base would be recalibrated based on actual benefit costs. The cost of the recommendation is \$215,424 system-wide in comparison to the 2009 Executive Proposed Budget.

I. Case weighting of general felony caseload

DCHS/OMB recommends option b: immediately establish a workgroup of criminal justice system stakeholders to evaluate the need to adjust the felony caseload methodology and determine if case weighting is beneficial. OPD will conduct a review of affected case types to determine the weighting dynamic, establishing a historic reference and future trend, and anticipated financial adjustment, if any, to the overall OPD budget. The analysis is to establish an approach for determining case credit distribution within annual system total budgeted case credits. The discussion may result in an adjustment to extraordinary case credit application guidelines. The discussion also may include interim adjustments that can be made to the credit based system, while analysis of case trends and budget implications is completed.

J. Aggravated/complex reimbursement levels

DCHS/OMB recommends option b: provide for additional compensation by modifying the attorney salary parity methodology to include Senior IV and V level of attorneys. Including the higher level attorneys will provide the contractors with the capacity to assign the higher level attorneys to this caseload, and compensate them appropriately. As independent contractors, the county cannot require the contractors to compensate their staff at any specific amount.

K. Contract variance

DCHS/OMB recommends option a: continue with existing contract variance methodology. OPD will review and analyze the appropriateness of the variance percentages. OPD will provide statistically significant data showing implications of percentages for contract terms.

L. Deferred revenue (prepayment)

**Response to King County Council Proviso
Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms**

DCHS/OMB recommends option c: maintain the current contract terms regarding prepayments.

M. Process for reviewing issues that impact work and funding mid-contract

DCHS/OMB recommends option b: OPD will continue a structured monthly contract agency director meeting to discuss county defense services system topics.

N. IT/County network issues

DCHS/OMB recommends option d: renew efforts to complete the transition of the contractors off KC WAN by reassessing county IT concerns and financial impacts. An IT workgroup should be reinstated to complete a detailed recommendation.

O. Rent

DCHS/OMB recommends option b: Use a three year average of actual caseload (2006, 2007, and 2008) and apply it annually to an updated three year rolling average rent rate. Under this recommendation, OPD would continue to round up partial FTEs system-wide for the purposes of the rent calculation. The cost of this option as compared to the 2009 Executive Proposed Budget is an additional \$170,990.



**Response to King County Council Proviso
Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms**

IX. Summary of Costs

OPD Budget Impacts of Public Defense Payment Model Revisions

Summary of Current 2009 Budget

2009 Executive Proposed Contract Budget	\$	27,700,433
Assigned Counsel/Experts	\$	4,422,478
OPD Administration	\$	2,713,552
Total Exec. Proposed (as submitted on Oct. 13, 2008)	\$	34,836,463
Council Adopted 2009 Budget (for six months)	\$	18,397,561

Summary of Cost Increase Due to Proviso Recommendations

The proposed supplemental would provide funding for contracted services, assigned counsel, expert witnesses and OPD administration, as well as cost increases identified in the proviso response.

OPD/OMB Recommendation for Proviso Response	2009 Adopted	Supplemental (July - Dec 2009)	2009 Total
Contract Budget	\$ 14,804,855	\$ 15,057,772	\$ 29,862,627
Assigned Counsel	\$ 1,543,028	\$ 1,333,826	\$ 2,876,853
Experts	\$ 772,813	\$ 772,813	\$ 1,545,625
OPD Administration	\$ 1,276,866	\$ 1,436,686	\$ 2,713,552
Total New Proposed	\$ 18,397,561	\$ 18,601,096	\$ 36,998,657
Less Reserve for second half of 2009		\$ 16,217,631	
Additional Funding Required		\$ 2,383,465	

Supplemental budget request does not include other possible costs identified at this time:

- a) Impact of PAO backlog misdemeanor and DUI filings.
- b) Impact of truancy caseload increases as a result of Bellevue School District v. E.S.
- c) Revenue backed expansions under MIDD (Juvenile Drug, Adult Drug and Mental Health Courts).

**Response to King County Council Proviso
Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms**
OPD Budget Impacts of Public Defense Payment Model Revisions (continued)
Proviso Issues and Costs Itemized

	Issue	Cost Over Executive Proposed Budget (Annualized)	Six Month Cost (July – Dec. 2009)
A	Clerical Staffing Levels At 0.2 ratio	\$ 459,810	\$ 229,905
B	Expedited Felony Calendar 4 Attorneys	\$ 486,561	\$ 243,281
C	Electronic Filing	No estimated \$ impact	
D	Attrition Rate	No estimated \$ impact	
E	Attorney Level Salaries ¹ Reconcile PAO parity January 2009, to include PAO merit and promotions and to include Senior IVs and Vs	\$ 1,529,402	\$ 764,701
F	Partial FTE Funding Round caseloads so that no partial FTEs are created (1.17 additional FTEs) <i>Not Included in total. This is hard to separate as an item. This cost is incorporated into other issue subtotals.</i>	\$ 207,000	
G	Professional Staff Salary Use 2008 market survey	\$ (1,209)	\$ (605)
H	Benefits Calculation Update with 2008 Actual Expenditures	\$ 215,424	\$ 107,712
I	Case Weighting ²	No estimated \$ impact	
J	Aggravated Murder/Complex litigation ³	No estimated \$ impact	
K	Contract Variance	No estimated \$ impact	
L	Deferred revenue (prepayments)	No estimated \$ impact	
M	Mid-Contract Changes	No estimated \$ impact	
N	IT/County Network Issues	No estimated \$ impact	
O	Rent 3 year average caseload applied to 3 year rolling average rent	\$ 170,990	\$ 85,495
	Salary increase effect on FICA	\$ 152,082	\$ 76,041
	Change in Administrative and Indirect Overhead ⁴	\$ (109,425)	\$ (54,713)
	Impact of PAO furlough ⁵	\$ (488,525)	\$ (244,263)
	Total annual impact over 2009 Proposed Budget	\$ 2,415,110	\$ 1,207,555

1. Only a small portion (approximately ten percent) of the increase is attributed to including the Senior IVs and Vs; the majority of the increase is due to realigning salaries to the PAO after payroll reconciliation
2. Additional data collection and analysis needs to be completed by a work group.
3. DCHS proposes no change; adding Senior IV and V will solve most of contractors' concern.
4. Using 2008 contractor expenditure data, the administrative overhead rate is 7.60 percent and Indirect overhead rate is 4.49 percent.
5. Consistent with the impact of a six day furlough on the PAO's salaries, a reduction equivalent to a 2.31 percent salary reduction was made.



King County

Response to King County Council Proviso Regarding Indigent Defense Contracts with Independent Non-Profit Law Firms

Full Year Cost Comparison for Public Defense Contracts

Cost Type	2009 Executive Proposed Budget (transmitted October 13, 2008)	DCHS/OMB Recommendation (February 2009)	Change DCHS/OMB vs. Executive Proposed
Attorney Salaries	12,181,546	13,375,969	1,194,423
Supervisor Salaries	1,505,385	1,547,738	42,353
Non legal Professional	3,563,411	3,481,638	(81,773)
Clerical	436,091	876,169	440,078
Total Salaries	17,686,433	19,281,514	1,595,080
FICA	1,353,012	1,475,036	122,024
Other Benefits	2,136,272	2,351,696	215,424
Total Benefits	3,489,284	3,826,731	337,447
Direct Overhead	630,247	645,251	15,005
Mileage	140,386	137,378	(3,008)
Admin Overhead	1,888,143	1,850,943	(37,200)
Indirect Overhead	1,174,157	1,072,863	(101,293)
Rent	2,282,417	2,453,407	170,990
Miscellaneous	47,847	12,986	(34,861)
Total Costs	27,338,913	29,281,073	1,942,160

Change from 2008 Contract Extension Model

Expedited Felony Calendar

(Executive Proposed at two attorneys and
DCHS/OMB proposed at four attorneys)

	361,520	834,470	472,950
Total Including Expedited Felony Calendars	27,700,433	30,115,543	2,415,110

Executive Proposed Budget included 3 percent COLA to account for the impact on PAO salaries of the proposed labor strategy.

DCHS Recommendation includes 4.88 percent COLA and 2.31 percent reduction for impact of six day PAO furlough.

Note: This table displays contract costs only, annualized for one full year. These should not be confused with 2009 budget needs; see previous spreadsheet "OPD Budget Impact of Public Defense Payment Model Revisions" for 2009 budget.



KING COUNTY

Signature Report

July 18, 2005

Motion 12160

APPENDIX A

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Proposed No. 2005-0092.2

Sponsors Gossett

1 A MOTION adopting the public defense payment model,
2 establishing a framework for budgeting indigent legal
3 defense services in King County, and requesting the
4 executive to transmit for council approval by motion a
5 business case justifying the need to contract with a new
6 agency to handle conflict cases.

7
8
9 WHEREAS, it is declared a public purpose that each citizen is entitled to equal
10 justice under the law without regard for his or her ability to pay, and

11 WHEREAS, King County makes publicly financed legal services available to the
12 indigent and the near indigent person in all matters when there may be a likelihood that
13 he or she may be deprived of liberty pursuant to the law of the state of Washington or
14 King County, and

15 WHEREAS, it is the intention of King County to make such services available in
16 an efficient manner which provides adequate representation at a reasonable cost, and

17 WHEREAS, in Washington state, the cost of providing indigent defense services
18 is primarily the responsibility of counties and cities, and

19 WHEREAS, for over thirty years, King County has provided public defense
20 services by contracting with nonprofit defender organizations formed for the specific
21 purpose of providing legal defense services to the indigent as well as other independent
22 contractors, and

23 WHEREAS, the thirty years of providing indigent defense services by contracting
24 with nonprofit defender organizations and independent contractors has provided King
25 County with sufficient information to understand an appropriate payment model for the
26 provision of such services, and

27 WHEREAS, prior to 2004, the office of the public defender developed its annual
28 budget using budget information provided by the defender organizations. This practice
29 resulted in different payments to each agency for the same type of work, and

30 WHEREAS, in 2004, the office of the public defender developed a funding model
31 that created a uniform payment structure for salaries, benefits and administrative costs
32 across the defender agencies, and

33 WHEREAS, the funding model was used for the first time in the 2004 annual
34 budget and updated for the 2005 budget, and

35 WHEREAS, the defender agencies were not fully informed of the basic
36 assumptions of the funding model, and

37 WHEREAS, during the 2005 budget process, the budget and fiscal management
38 committee heard testimony from the defender agencies expressing concerns regarding the

39 funding model including the lack of transparency and inadequate funding for salaries,
40 benefits and administrative expenses, and

41 WHEREAS, the 2005 executive proposed budget for the office of the public
42 defender included a plan to solicit proposals for a new defender agency to provide
43 indigent defense services for cases that cannot be assigned to existing contract agencies
44 due to an ethical conflict of interest, and

45 WHEREAS, the budget and fiscal management committee heard testimony from
46 members of the public, members of the assigned counsel panel and the defender agencies
47 at four public hearings on the 2005 executive proposed budget expressing opposition to
48 the plan to contract with a new defender agency, and

49 WHEREAS, Ordinance 15083, adopted by the King County council on November
50 22, 2004, encumbers five hundred thousand dollars until the office of the public defender
51 has submitted and the council has approved by motion a report that describes the model
52 used to develop funding levels for public defense contracts and describes an option for
53 the provision of indigent defense services for cases that cannot be assigned to existing
54 contract agencies due to an ethical conflict of interest, and

55 WHEREAS, the motion and the report required by Ordinance 15083 was due on
56 January 14, 2005, and submitted to the council on February 23, 2005, and

57 WHEREAS, Ordinance 15151 adopted by the King County council on April 18,
58 2005, approved a supplemental appropriation for the office of the public defender in the
59 amount of \$2,116,095 solely for one-time 2005 transition funding for public defense
60 contract agencies, and

Motion 12160

61 WHEREAS, since January 2005, the directors of the defender agencies have been
62 meeting weekly with staff of the office of the public defender to discuss and provide
63 input on refinements to the financial model for 2006 and beyond; and

64 WHEREAS, in April 2005, staff from the council and the office of management
65 and budget have attended the weekly meetings and have been working collaboratively
66 with the defender agencies to refine the funding model for 2006 and beyond.

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

68 1. **Model Adoption.** The council hereby adopts the Public Defense Payment
69 Model set out in Attachment A to this motion. The Public Defense Payment Model is the
70 analytical framework for calculating the costs to provide indigent defense services in
71 order to guide preparation of the proposed annual appropriation for public defense and to
72 structure contracts for indigent defense services. The Public Defense Payment Model is
73 not intended to and does not in any way alter the relationship between King County and
74 the nonprofit agencies with which King County contracts, namely that the agencies are
75 independent contractors to King County. The annual proposed budget for indigent
76 defense services shall be developed based on the Public Defense Payment Model. The
77 financial components of the model and any executive-proposed changes to the model
78 shall be submitted with the proposed appropriation ordinance for the ensuing budget year.

79 2. **Model Policies.** The council hereby approves the following policies of the
80 financial model contained in Attachment A to this motion.

81 A. **Uniform Cost Structure.** The purpose of the model is to provide a
82 framework for creating a uniform basis of payment that is consistent across all contract
83 agencies providing indigent legal defense services. The model results in four basic

84 payment points: (1) a price per credit that includes salaries for attorneys, supervisors and
85 support staff, FICA, benefits, and case-related overhead costs; (2) an administrative and
86 overhead rate that covers administrative staff and operational costs; (3) a rent allocation
87 and 4) calendar costs represented as a cost per specific calendar assignment.

88 **B. Parity.** The model shall budget payment for public defender attorney
89 salaries at parity with similarly situated attorneys (where positions budgeted in the model
90 are in comparable classifications with comparable duties and responsibilities) in the
91 office of the prosecuting attorney. For the purposes of the model, "salary" means pay
92 exclusive of benefits. Parity means that public defender attorney salaries shall be
93 comparable to the salaries of those similarly situated attorneys in the office of the
94 prosecuting attorney. The office of the public defender shall be responsible for tracking
95 and updating public defender attorney salaries annually in the Kenny Salary Table. The
96 Kenny Salary Table shall be updated annually to account for cost of living adjustments,
97 step increases for non-senior level attorneys and parity increases for all attorney levels
98 including seniors and supervisors.

99 **C. Transparency.** The model's detailed framework is intended to make clear
100 how the proposed budget for indigent legal defense services is developed. It is not
101 intended that the detailed components of the model establish expenditure requirements by
102 the independent contract agencies. Each independent contractor has discretion to use the
103 monies provided under contract with the county in any manner as long as they are used to
104 execute the contract. It is intended that the model be updated every three years follows:
105 2006 is Year 1; 2007 is Year 2; 2008 is Year 3. The model shall be updated and revised
106 as needed for the 2009 budget.

Motion 12160

107. **3. Assigned Counsel Costs.** The council acknowledges the escalating
108 expenditures for assigned counsel and the need for the county to implement measures to
109 control these costs. The council hereby requests the executive to delay soliciting
110 proposals for a new agency to accept conflict cases until the executive has transmitted
111 and the council has approved by motion a business case that provides a description of and
112 a justification for a new agency. The business case shall include actual assigned counsel
113 expenditures from 1998 to 2005, targets for 2006 to 2008, a review of cases assigned to
114 counsel outside the public defender agencies to determine if the cases were assigned
115 because of an ethical conflict or for some other reason and a cost/benefit analysis that
116 shall analyze if savings can be achieved by contracting with a new agency to handle
117 conflict cases. The motion adopting the business case shall be transmitted to the council
118 no later than May 1, 2006.

119 The motion and business case must be filed in the form of 15 copies with the clerk
120 of the council, who will retain the original and will forward copies to each

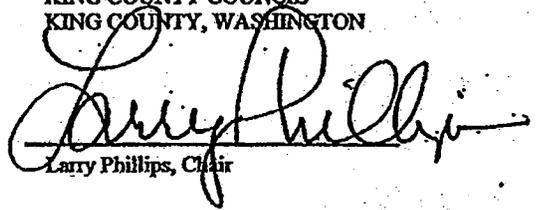
Motion 12160

21 councilmember and the lead staff of the budget and fiscal management committee or its
122 successor.
123

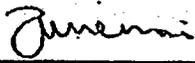
Motion 12160 was introduced on 2/28/2005 and passed by the Metropolitan King County Council on 7/18/2005, by the following vote:

Yes: 13 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. Dunn, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms. Patterson and Mr. Constantine
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Public Defense Payment Model for General Fund Expenses for Indigent Public Defense Services in King County, dated July 13, 2005

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

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

STEP 1: Project the Annual Caseload Credit Volume

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

<u>Case Area</u>	<u>Caseload Standard</u>
• Complex felony (e.g. death penalty, homicide cases)	150 credits
• Regular felony	150 credits
• King County misdemeanor	450 credits
• Juvenile	330 credits
• Dependency	180 credits
• Contempt of court	225 credits

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

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

A. Salaries

1. Attorney Salaries
2. Supervisor Salaries
3. Non-legal Professional Support Staff Salaries
4. Clerical Staff Salaries

B. FICA (Social Security + Medicare Taxes)

C. Benefits

D. Direct Overhead Costs Related to Legal Practice

1. Legal Staff
2. Non-Legal Staff

A. Salaries

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1. Attorney Salary: The model budgets public defender attorney salaries at parity with similarly situated attorneys (where positions budgeted in the model are in comparable classifications with comparable duties and responsibilities) in the Office of the Prosecuting Attorney. For the purposes of the model, salary means pay exclusive of benefits. Salaries are tracked and updated annually by the Office of the Public Defender in the Kenny Salary Table. The attorney salary price per credit is based on the weighted average of salaries for attorneys in the 2005 system taking into account parity increases, an annual COLA¹ increase, an annual step increase for public defender level attorneys through level 4.6 and an annual attrition rate. The weighted average of attorney salaries shall be re-calculated every three years with 2006 as Year 1; 2007 as Year 2; 2008 as Year 3.

$$\frac{(\text{Weighted Average Attorney Salary})}{\text{Caseload Standard}} = \text{Attorney Salary Price Per Credit}$$

2. Supervisor Salary: The model funds the contract requirement of each defender agency to provide a ratio of 0.1 supervisors for each attorney. The supervising attorney salary price per credit calculation is based on the weighted average of salaries for supervisors in the 2005 system, salary parity and an annual COLA increase. The weighted average of supervisor salaries shall be re-calculated every three years as indicated above.

$$\frac{(\text{Weighted Average Supervisor Salary}) \times 0.1}{\text{Caseload Standard}} = \text{Supervisor Salary Price Per Credit}$$

3. Non-Legal Professional Support Staff Salaries: The model funds the contract requirement of each defender agency to provide sufficient professional support staff (social worker, investigator and paralegal) for each attorney. The non-legal support staff salary price per credit is based on the average market rate for paralegals, investigators and social workers taking into account the percentage distribution of FTEs in the three non-legal staff categories in the 2005 system. The model payment standard is 0.5 professional support staff per attorney with an annual COLA increase.

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

4. Clerical Staff Salaries: The model funds the contract requirement of each defender agency to provide sufficient clerical staff for each attorney. The clerical staff salary price per credit is based on the average market rate for clerical staff taking into account the salary distribution of clerical staff in the 2005 system. The model payment standard is 0.25 clerical staff per attorney with an annual COLA increase.

$$\frac{(\text{Clerical Staff Salary}) \times 0.25}{\text{Caseload Standard}} = \text{Clerical Salary Price Per Credit}$$

¹ COLA = Cost of living adjustment. The model uses the same COLA rate applied to most County employees; the COLA increase is 80% of the change in the September to September national consumer price index (CPI-W), with a floor of 2.00%.

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

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

C. Benefits: The model budgets for benefits based on the 2003 benefit amount per agency FTE inflated annually at the rate of inflation experienced by the county flex benefit plan. The model does not prescribe the type of benefits contract agencies provide to their employees.

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

$$\text{(2003 benefit amount per FTE)} \times \text{(2004 actual inflation rate)} \times \text{(2005 actual inflation rate)} \times \text{(2006 projected inflation rate)} = \text{2006 Benefit Allocation Per FTE}$$

2. Calculate the Benefit Price per Credit.

$$\frac{\text{(Benefit Allocation per FTE)} \times (1.85^2)}{\text{Caseload Standard}} = \text{Benefit Price Per Credit}$$

D. Direct Overhead Allocation Related to the Practice of Law

1. Calculate the Legal Staff Overhead Allocation and Price per Credit: The model budgets this allocation on a rate-per-attorney basis using 2005 system costs as a baseline taking into account the following categories: liability insurance, licenses, continuing legal education, memberships and dues, library costs, computer desktop replacement, and parking and mileage for investigators and attorneys. A COLA increase is applied annually.

$$\text{A. Legal Staff Allocation} = \frac{\text{Legal Admin Rate per Attorney}}{\text{Number of Attorneys}}$$

$$\text{B. Legal Admin Rate per Attorney} = \frac{\text{Legal Admin Rate Price per Credit}}{\text{Caseload Standard}}$$

2. Non-Legal Staff Overhead Allocation and Price per Credit: The model budgets this allocation on a rate-per-FTE basis for investigators, social workers and paralegals using 2005 system costs as a baseline taking into account the following categories: liability insurance, licenses, training and education, memberships and dues, library and desktop replacement. A COLA increase is applied annually.

$$\text{A. Non-Legal Staff Admin Allocation} = \frac{\text{Non-Legal Staff Admin Rate per FTE}}{\text{Number of Non-Legal FTEs}}$$

$$\text{B. Non-Legal Staff Admin Rate per FTE} = \frac{\text{Non-Legal Admin Rate Price per Credit}}{\text{Caseload Standard}}$$

STEP 3. Calculate the Total Price Per Credit

² 1.85 = 1 attorney; 0.1 supervisor; 0.5 non-legal staff; and 0.25 clerical staff.

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A separate price per credit is calculated for each case area taking into account differing attorney levels assigned to each case area.

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

STEP 4. Indirect Administrative and Overhead Allocations

For indirect administrative/overhead costs including office operations, capital equipment purchases and leases and other agency-related costs and for agency administration, the model uses a percentage rate which is to be derived from the 2003 rate of administrative/overhead costs to total direct expenditures (caseload and calendar related salaries, benefits, FICA, and legal-related administrative expenses). Adjustments may be made to the rate to accommodate for business process changes which may occur from time to time. Each contract agency will be allocated a percentage share of the total allocation based upon the agency's share of the total system direct costs.

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

STEP 5. Rent Allocation:

A. Calculate the number of FTEs required to manage the annual caseload volume as follows:

1. Attorneys: calculated directly from the caseload standards and calendar tables
2. Supervisors = (# of attorneys) x 0.1
3. Non-legal professional and clerical support = (# of attorneys) x 0.75
4. Administrative staff

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

1. Assign each personnel category above in A1-4 an appropriate square footage allocation not to exceed the Executive's 2004 proposed county space standards. For the investigator position, the model uses the City of Seattle space standards, Version 1.2000;
2. Multiply the FTE in each category by the square foot allotment;
3. Apply an allocation for special spaces such as storage, lunch rooms, and conference rooms; and
4. Calculate the circulation allowance for commons areas, restrooms and hallways not to exceed current county policy of 0.25 percent as follows: (B2 + B3) x 0.25.

(B2 + B3 + B4) = Total Square Footage

C. Calculate the total rent allocation:

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

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

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

STEP 6: Calendar Attorney and Staff Allocation

- A. Compile the list of court calendars to be assigned to each attorney:
B. Calculate the costs for salaries, FICA and benefits for attorneys, supervisors and non-legal staff assigned to calendar duty as follows:
1. Number of Attorney FTEs x Attorney Salary per FTE = Total Attorney Cost
 2. Number of Supervisor attorneys x Supervisor Salary per FTE = Total Supervisor Cost
 3. Number of Staff FTEs x Non-Legal Support Staff Salary per FTE = Total Non-Legal Staff Cost
 4. (Total Attorney Cost + Total Non-Legal Staff Cost) x .0765 = FICA Cost
 5. (Total Attorney and Non-Legal Staff FTEs) x (Per FTE Benefit Allocation) = Benefit Cost

- B. Calculate the total cost for calendar attorneys and staff as follows:

$$(A1) + (A2) + (A3) + (A4) = \text{Total Calendar Allocation}$$

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

KING COUNTY

Human Resources Management Division:

Public Defender/Prosecuting Attorney's Office
Classification Parity Study Report

April 17, 2007


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KING COUNTY
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APPENDIX

- A. Job Content Topics Guide
- B. Job Evaluation Method
- C. Job/Class Description –Public Defenders
- D. Job/Class Descriptions – Prosecuting Attorney's Office

I. BACKGROUND AND PURPOSE

The King County, Human Resources Management Division retained Johnson HR Consulting, Inc. to conduct a study and prepare a report related to the classification parity between the Senior level Attorneys in the Public Defender's Funding Model and the Prosecuting Attorney's Office.

A. SCOPE OF WORK

The study was conducted in September 2006 and covered these areas:

1. We verified the 2006 job/class levels for Senior Deputy Prosecuting Attorneys and Senior Public Defense Attorneys.
2. We prepared job/class descriptions for the defense and prosecutor Senior levels and wrote clear distinctions between the Senior levels.
3. The identification was completed covering the number of Senior Deputy Prosecuting Attorneys in the Criminal Division and the number of Senior Deputy Public Defense Attorneys.
4. The job/class staffing ratios were identified in the funding model used by Public Defender.
5. We prepared our opinion related to the distribution of Senior-level public defense Attorneys identified in the staffing ratios in the Public Defender funding model.
6. We prepared our recommendation for a change in the distribution of Senior levels in the Public Defense attorneys to approximate parity as defined in Metropolitan King County Council Motion 12160.
7. In addition, Johnson HR Consulting, Inc. is available to present and discuss the report in King County Council or Committee hearings or meetings.

The scope of work for the study included job classification only and not salary surveys or related compensation elements.

B. HISTORY:

In November 1989, the Kenney Consulting Group prepared a classification and salary study for the Attorney positions in the Prosecuting Attorney's Office and in the Public Defense contract agencies.

The classification and compensation design in this study has served well for seventeen years. In our opinion, this is remarkable longevity for a design covering professional level positions. It is a credit to the people involved in the design and administration of the plan.

Revisions to the original work are contained in our analysis, opinion and recommendation section.

II. PROJECT STEPS

To complete the study, we followed these steps:

A. STEP 1 – JOB DOCUMENTATION

We read the following information:

1. Metropolitan King County Council Motion – 12160
2. Kenney Consulting Group report
3. Senior level job/class specifications for Public Defense attorneys and Prosecuting Attorney's Office
4. Organizational structure for the Public Defender's Office and Prosecuting Attorney's Office
5. Payment model and salary structure for Senior levels
6. Information covering the number of positions in Senior level jobs/classes

B. STEP 2 – INTERVIEWS

We met with the following staff:

1. Three members of the Human Resources Management staff to further our understanding of the project and job/class levels
2. Chief of Staff, Deputy Chief of Staff, and Assistant Chief Criminal Deputy in the Office of Prosecuting Attorney
3. Deputy Director of the Office of the Public Defender

The interviews covered the essential work content areas of job purpose, duties, responsibilities, decision making, contacts, major challenges, essential competencies, and dimension/scope information. A list of the job content topics is in the report Appendix A.

II. PROJECT STEPS - continued

C. STEP 3 – JOB EVALUATION:

Each of the Senior level jobs was evaluated based on essential work content. The job evaluation factors used are:

1. Know-how: the sum total of every kind of competency needed for the work – depth and breadth of know-how, as well as human relations skills for understanding and motivating people in the highest degree
2. Problem-solving: The original thinking required by the work for analyzing, evaluating, creating, reasoning, arriving at and making conclusions
3. Accountability: The level and role in decisions and consequences – freedom to act, job impact on outcomes, and magnitude of accountability as measured by the affect of decisions on the essential work content at a significant level

In Appendix B, we have included a description of the job evaluation process.

III. ANALYSIS, OPINION AND RECOMMENDATION

This section corresponds to the scope of work in the request for proposal.

A. JOB/CLASS LEVELS

We have updated the original Kenney Consulting Group job/class descriptions based on the essential work content. The updated job/class descriptions are in the Appendices C and D.

The Kenney Consulting Group report covers these levels:

- Senior Public Defense Attorney III
- Senior Public Defense Attorney II
- Senior Public Defense Attorney I

- Senior Deputy Prosecuting Attorney IV
- Senior Deputy Prosecuting Attorney III
- Senior Deputy Prosecuting Attorney II
- Senior Deputy Prosecuting Attorney I

Our 2006 job evaluation of these seven levels correlates to the 1989 job evaluations. We display a comparison of the two sets of evaluations on page 4 of this report. There is a Senior Deputy Prosecuting Attorney V level that was not covered in the 1989 report. We have prepared a job evaluation for this level that reflects the job's administrative and management accountabilities.

The final job evaluation numbers/points are different between the two sets of evaluations only because different evaluation tools were used. However, each evaluation tool covered the same essential work content factors and elements.

We concur with the job evaluation levels in the 1989 report.

III. ANALYSIS, OPINIONS AND RECOMMENDATIONS - continued

<p>King County: Public Defender Funding Model / Prosecuting Attorney's Office</p> <p>Classification Parity Study Comparison of Kenny Consulting (1989) (K) and Johnson HR Consulting (2006) (J) Job Evaluation of Essential Work Content (Separate Evaluation Processes) Appendix C and D have the complete job/class descriptions for these jobs.</p>	<p><u>Senior Deputy Prosecuting Attorney V</u> K (None) J (1450)</p>
	<ul style="list-style-type: none"> • Master level knowledge and competency and trial skills • Significant administrative/management role in Criminal Division strategy and approaches • Leads significant unit/area • One job evaluation level higher than Senior Deputy Prosecuting Attorney IV
	<p><u>Senior Deputy Prosecuting Attorney IV</u> K (1052) J (1262)</p>
	<ul style="list-style-type: none"> • Extensive knowledge, competency and trial skills • Significant proficiency at high level in cases • Administrative/management guidance provided to Attorneys • Provides direction to work section • One job evaluation level higher than Senior Public Defense Attorney III
<p><u>Senior Public Defense Attorney III</u> K (942) J (1096)</p>	<p><u>Senior Deputy Prosecuting Attorney III</u> K (881) J (1096)</p>
<ul style="list-style-type: none"> • Thorough knowledge, competency and trial skills • Demonstrated proficiency at high level in cases • Management guidance provided to Attorneys • Lead role in most difficult/challenging assignments 	<ul style="list-style-type: none"> • Thorough knowledge, competency and trial skills • Demonstrated proficiency at high level in cases • Supervising guidance provided to Attorneys • Lead role in most difficult/challenging assignments
<p><u>Senior Public Defense Attorney II</u> K (766) J (890)</p>	<p><u>Senior Deputy Prosecuting Attorney II</u> K (766) J (890)</p>
<ul style="list-style-type: none"> • Increased competency and trial skills beyond I level • Demonstrated proficiency in various cases • Same level as Senior Deputy Prosecuting Attorney II 	<ul style="list-style-type: none"> • Increased competency and trial skills beyond I level • Demonstrated proficiency in various cases • Same level as Senior Public Defense Attorney II
<p><u>Senior Public Defense Attorney I</u> K (643) J (750)</p>	<p><u>Senior Deputy Prosecuting Attorney I</u> K (643) J (750)</p>
<ul style="list-style-type: none"> • Considerable knowledge of criminal law • Complex cases above Deputy levels • Additional experience at Deputy level • Same level as Senior Deputy Prosecuting Attorney I 	<ul style="list-style-type: none"> • Considerable knowledge of criminal law • Complex cases above Deputy levels • Additional experience at Deputy level • Same level as Senior Deputy Public Defense Attorney I

III. ANALYSIS, OPINIONS AND RECOMMENDATIONS - continued

B. JOB/CLASS DESCRIPTIONS

We updated the job/class descriptions for the Senior levels for both the Public Defender funding model and Prosecuting Attorney's Office. These updated descriptions are in Appendices C and D. The descriptions provide clear distinctions between the Senior levels. The display on the previous page shows some of these distinctions

C. CURRENT SENIOR ATTORNEYS/STAFFING RATIOS

The following table displays the current number and distribution of Senior level Attorneys shown in the Public Defender's funding model and Prosecuting Attorney's Office – Criminal Division for 2006.

The Senior Deputy Prosecuting Attorney IV and V jobs are involved in a variety of administrative areas such as strategy, planning, evaluating, controlling and related areas within the Prosecuting Attorney's office. These assignments are often not related to public defender cases or areas.

Public Defender's Funding Model	Prosecuting Attorney's Office – Criminal Division
	• Senior Deputy Prosecuting Attorney V 5 Staff
	• Senior Deputy Prosecuting Attorney IV 10 Staff
• Senior Public Defense Attorney III No FTE at time of study	• Senior Deputy Prosecuting Attorney III 9 Staff – 18% of total of I, II, III
• Senior Public Defense Attorney II 17.11 FTE – 47% of total	• Senior Deputy Prosecuting Attorney II 17 Staff – 34% of total of I, II, III
• Senior Public Defense Attorney I 19.16 FTE – 53% of total	• Senior Deputy Prosecuting Attorney I 24 Staff – 48% of total of I, II, III
36.27 Senior Positions at I, II, III	50 Senior Positions at I, II, III

Notes:

1. Senior Public Defense Attorneys number includes Dependency areas where State Attorney General involved

Notes:

1. Senior Deputy Prosecuting Attorneys number includes responsibilities in variety of criminal areas beyond cases involving Public Defense attorneys
 2. Senior Deputy Prosecuting Attorneys in job/class design reflecting several best practices* found in other complex organizations (written principles, guidelines, merit performance contributions, fiduciary accountability, approvals by Prosecuting Attorney)

*References The Conference Board and WorldatWork

III. ANALYSIS, OPINIONS AND RECOMMENDATIONS - continued

D. OPINION AND RECOMMENDATION ON SENIOR LEVELS - PUBLIC DEFENDER FUNDING MODEL

1. OPINION

The opinion presented in this section is that of Johnson HR Consulting, Inc. Bob Johnson prepared the opinion. Mr. Johnson has forty years of experience in compensation, job evaluation, benefits and related human resources areas in the public sector, private sector and consulting.

He was a partner with Hay Management Consultants and taught job evaluation courses for clients. He has evaluated approximately 45,000 jobs.

In the opinion of Johnson HR Consulting, Inc. the distribution of Senior level jobs/classes in the Public Defender's Funding Model should be revised to utilize the Senior Public Defense Attorney III level.

This opinion is based on the essential work content of the job/class, the job evaluation of the Senior level jobs, the best practice model in the Office of the Prosecuting Attorney, and the intent of the Metropolitan King County Council Motion 12160 "The model shall budget payment for Public Defender Attorney salaries at parity with similarly situated Attorneys (where positions budgeted in the model are in comparable classifications with comparable duties and responsibilities) in the Office of the Prosecuting Attorney".

2. RECOMMENDATION:

We recommend a change in the distribution of positions in the Senior Public Defense Attorney jobs/classes to reflect reasonable parity with similarly situated jobs in the Office of the Prosecuting Attorney at the I, II and III levels.

In the display on page 5, for 2006, there are 9 Senior Deputy Prosecuting Attorney III jobs that represent 18% of the total number of Senior Deputy Prosecuting Attorney I, II, and III levels in the Criminal Division. Our recommendation is to redistribute 18% or 6.53 of the Senior Attorney positions in the Public Defender's Funding Model to the Senior Public Defense Attorney III level. We also have redistributed the Senior Public Defense Attorney I and II levels to reflect the distribution of the Senior Deputy Prosecuting Attorney I and II levels.

<ul style="list-style-type: none"> ● Senior Public Defense Attorney III 6.53 Staff – 18% of total of I, II, III 	<ul style="list-style-type: none"> ● Senior Deputy Prosecuting Attorney III 9 Staff – 18% of total of I, II, III
<ul style="list-style-type: none"> ● Senior Public Defense Attorney II 12.33 Staff – 34% of total 	<ul style="list-style-type: none"> ● Senior Deputy Prosecuting Attorney II 17 Staff – 34% of total of I, II, III
<ul style="list-style-type: none"> ● Senior Public Defense Attorney I 17.41 Staff – 48% of total 	<ul style="list-style-type: none"> ● Senior Deputy Prosecuting Attorney I 24 Staff – 48% of total of I, II, III
36.27 Senior Positions at I, II, III	50 Senior Positions at I, II, III

This recommendation conforms to the intent of Council Motion 12160.

The typical selection criteria for the assignment of staff to a higher level job, similar to the III, is based on essential work performance and a demonstrated knowledge of the higher level responsibilities.

E. HEARINGS/MEETINGS

We are available to present and discuss our report in up to four King County Council or Committee hearings and/or meetings. This complies with the requirements in the request for proposal.

APPENDIX A

Job Content Topic Guide

Name	Date
Position Title	
Name Of Person To Whom You Report	Name Of Person To Whom You Report

I. JOB SUMMARY/PURPOSE
 What best describes the overall purpose of the position?

ESSENTIAL POSITION FUNCTIONS

II. SPECIFIC DUTIES

Starting with the most important, please list the duties which make up the position's regular assignments.

Essential Position Functions	Estimated % of Time	Estimated Frequency

III. RESPONSIBILITIES AND DECISION MAKING

A. What kinds of decisions does the position have the authority to make?

B. What kinds of decisions does the position refer to the supervisor?

IV. PERSONAL CONTACTS

During the regular course of work, what persons in other departments and outside the organization is the position required to contact and/or work with, and for what purpose:

V. MAJOR CHALLENGES

A. Typical problems/issues

B. Most complex problems/issues

Job Content Topic Guide**VI. ESSENTIAL POSITION KNOWLEDGE, SKILLS, AND ABILITIES**

- A. What prior experience and how much is required for this position? What is the minimum level of formal education - or equivalent - required for the position? What special courses are needed?
- B. Are there specific licenses, certificates or requirements for the position? Please specify what is required.
- C. What other elements are important knowledge, skills, and abilities for the position?

VII. RELEVANT DIMENSION/SCOPE DATA**VIII. ADDITIONAL COMPENSABLE ELEMENTS**

APPENDIX B

KING COUNTY
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The King County Management jobs were evaluated to reflect internal relationships. The following describes the job evaluation method.

THE HAY GUIDE CHART-PROFILE METHOD

By Alvin O. Bellak, General Partner, The Hay Group, Philadelphia, Pennsylvania

The following two references are the basis for this information:

1. Handbook of Wage and Salary Administration, - Second Edition (Chapter 15), Milton L. Rock, Editor-in-Chief, Managing Partner – The Hay Group, McGraw-Hill Book Company, Copyright 1984 – 1972
2. The Compensation Handbook, A State of the Art Guide to Compensation Strategy and Design – Third Edition (Chapter 6), Milton L. Rock and Lance A. Berger, Editors-in-Chief, McGraw-Hill Book Company, Copyright 1991, 1984 and 1972

The Guide Chart-Profile Method of job Evaluation was developed by the Hay Group in the early 1950s. Its roots are in factor comparison methods in which Edward N. Hay was a pioneer. In its evolved form, it has become the most widely used single process for the evaluation of management, professional, and technical jobs in existence. It is used by more than 4000 profit and nonprofit organizations in some 30 countries (7500 organizations as of 2000).

The Hay organization was founded in 1943. While job evaluation processes of various kinds had existed for many years prior to that date, they were applied for the most part to factory and clerical positions. "Edward N. Hay and Associates," the founding organization, thought it not only had a better "mousetrap," its own factor comparison method, but that the method could be applied effectively to exempt as well as nonexempt jobs. This was quite unique at a time when few managers thought their jobs could be described in written form, let alone evaluated.

The Guide Charts were created in 1951 in a client situation. The consultants had led a corporate committee in its application of the Hay Factor Comparison Method. A review board was pleased with the results but mystified as to the reasons which equated jobs in different functions with each other. As one member put it, "tell me again on what precise premises this sales job was equated with that manufacturing job." It became apparent that to repeat endlessly an explanation of factor comparison processes would be difficult.

What was needed was a record for present and future use which would show exactly the descriptive considerations and their quantitative measures which entered into each evaluation. This forced a search for the basic reasons, arranged in some kind of rational order, on a scale. Thus the Guide Charts came into being. It is important to note that the creation came through an inductive process in a real situation. It required a deep understanding of jobs and organizations as well as scaling techniques. The creators of the Guide Chart-Profile Method made four critically important observations:

1. While there were many factors one could consider (indeed, some methods had dozens), the most significant could be grouped as representing the essential knowledge required to do a job, the kind of thinking needed to solve the problems commonly faced, and the responsibilities assigned.

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2. Jobs could be ranked not only in the order of importance within the structure of an organization, but the distances between the ranks could be determined.
3. The factors appeared in certain kinds of patterns that seemed to be inherent to certain kinds of jobs.
4. The focus of the process of job evaluation must be on the nature and requirements of the job itself, not on the skills or background or characteristics or pay of the job holder.

THE GUIDE CHART-PROFILE METHOD

What evolved was a three-factor codification with a total of eight elements.

Know-How: The sum total of every kind of essential capability or skill, however acquired, needed for acceptable job performance. Its three dimensions are requirements for:

- Practical procedures, specialized techniques and knowledge within occupational fields, commercial functions, and professional or scientific disciplines.
- Integrating and harmonizing simultaneous achievement of diversified functions within managerial situations occurring in operating, technical, support, or administrative fields. This involves, in some combination, skills in planning, organizing, executing, controlling, and evaluating and may be exercised consultatively (about management) as well as executively.
- Active, practicing person-to-person skills in work with other people.

Problem Solving: The original, self-starting use of the essential know-how required by the job, to identify, define, and resolve problems. "You think with what you know." This is true of even the most creative work. The raw material of any thinking is knowledge of facts, principles, and means. For that reason, problem solving is treated as a percentage of know-how.

Problem solving has two dimensions:

- The environment in which thinking takes place
- The challenge presented by the thinking to be done

Accountability: The answerability for essential action and for the consequences thereof. It is the measured effect of the job on end results of the organization. It has three dimensions in the following order of importance:

- Freedom to Act. The extent of personal, procedural, or systematic guidance or control of actions in relation to the primary emphasis of the job.
- Job Impact on End Results. The extent to which the job can directly affect actions necessary to produce results within its primary emphasis.
- Magnitude. The portion of the total organization encompassed by the primary emphasis of the job. This is usually, but not necessarily, reflected by the annual revenue or expense dollars associated with the area in which the job has its primary emphasis.

A fourth factor, working conditions, is used, as appropriate, for those jobs where hazards, an unpleasant environment, and/or particular physical demands are significant elements.

It is to be noted that the Equal Pay Act of 1963 reference to job-to-job comparisons based upon "skill, effort, and responsibility" relates remarkably to the 1951 Hay Guide Chart factors. Both, of

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course, were derived from the same large body of knowledge as to what is common and measurable in essential job content.

Within the definitional structure, each Guide Chart has semantic scales which reflect degrees of presence of each element. Each scale, except for problem solving, is expandable to reflect the size and complexity of the organization to which it is applied. The language of the scales, carefully evolved over many years and applied to literally many hundreds of thousands of jobs of every kind, has remained fairly constant in recent years but is modified, as appropriate, to reflect the unique nature, character, and structure of any given organization.

For each factor, the judgment of value is reflected in a single number. At a later point, the size of the number is significant, but for the moment, it is the sequence of the numbers which is important. The numbers (except for the very lowest ones) increase at a rounded 15 percent rate. This conforms to a general principle of psychometric scaling derived from Weber's Law: "In comparing objects, we perceive not the absolute difference between them, but the ratio of this difference to the magnitude of the two objects compared." Further, for each type of perceived physical difference, the extent of difference required in order to be noticeable tends to be a specific constant percentage. The concept of "just noticeable difference" was adopted for the Guide Chart scales and set at 15 percent. Specifically, it was found that a job evaluation committee, when comparing two similar jobs on any single factor, had to perceive at least a 15 percent difference in order to come to a group agreement that job A was larger than job B.

Again, for the moment, the relationship between the numbering scales on the three charts is more significant than the absolute numbers themselves. Before there were Guide Charts, it was observed that jobs had characteristic shapes. Furthermore, these shapes were, in fact, known to managers and could be verbalized easily by them if they had a useful language for expression. Grouping job content elements under the rubrics of know-how, problem solving, and accountability gave them this language. Job shapes were characterized as:

- "Up-hill," where accountability exceeds problem solving
- "Flat," where these factors are exactly equal
- "Down-hill," where accountability is less than problem solving

While all jobs, by definition, must have some of each factor, however much or little, relative amounts of each can be vastly different. Therefore, one of the three shapes not only had to appear but also had to have a believable reality of its own. Thus an up-hill job was one where results to be achieved were a relatively more important feature than intensive thinking, i.e., a "do" job. A down-hill job was one where heightened use of knowledge through thinking was featured more than answerability for consequent results, i.e., a "think" job. A flat job was one with both "thinking" and "doing" in balance.

See H. E. Garrett, *Great Experiments in Psychology*, Century Company, New York, 1930, pp. 268-274, and Edward N. Hay, "Characteristics of Factor Comparison job Evaluation," *Personnel*, 1946, pp. 370-375.

For example, in the context of a total business organization, a sales or direct production position would be a typical up-hill, "do" job where the emphasis is clearly and strongly upon performance against very specific, often quite measurable targets or budgets. A chemist doing basic research or a market analyst studying the eating habits of teenagers would be a typical down-hill, or "think," job,

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where the emphasis is more on collecting and analyzing information than on taking or authorizing action based on the results. A personnel or accounting manager would be a typical flat job characterized both by the requirement to develop information for use by others (recommend a new pension plan or a means of handling foreign currency transactions) and to answer for results (the accuracy of the payroll or the timely production of books of account).

The concept of typical job shape is the "Profile" in the "Guide Chart-Profile Method" that controls the relative calibration of the three Guide Charts. That is, the numbering patterns on the Guide Charts are set such that proper use produces points for the factors which, when arrayed for a given job, produce credible profiles. It is very important to note that the Guide Chart-Profile Method gives an evaluation committee, or review board, quite uniquely, two means of assessing the accuracy of its evaluation for any given job. First, it can look at the points determined for a given job, relative to similar jobs and to jobs that are clearly larger or smaller. Second, by relying on its understanding of job shapes, it can assess the job's array on the three factors and make an independent judgment as to the probable validity of the evaluation. Relative point value and profile both must make sense for an evaluation to be accepted.

The final early observation that led to the creation of the Guide Chart-Profile Method was that jobs were to be measured independently of the job holders. This was not only correct but prescient, as it turns out. There was never, ever, any consideration of the talent, education, etc., of the job holder let alone the job holder's sex, age, ethnic origin, physical condition, or any other now banned personal attribute. The further stricture, also present from the beginning, was that the pay of the job holder and the market for such positions were both irrelevant to job evaluation. judgments were to be made only for the purpose of rank-ordering jobs and delineating the distances between ranks, i.e., to establish the relative importance of positions, top to bottom, within an organization structure.

Over the years since 1951, the fundamental principles of the Guide Chart-Profile Method have remained intact although there have been many refinements in language and application. Investigation of compensable job content elements continues, and there are refinements still to come. For example, is "concentration" a discrete, measurable element? Is working with many others in a vast, windowless office room an environmental unpleasantness comparable to the noxious quality of some factory environments? Should managers, as well as blue-collar workers, get working conditions points for spending time in dangerous, underground coal mines? or for frequent travel?

If one reflects on the material presented thus far-specifically, (a) Guide Chart "sizing" (adjusting the length of the scales to each particular organization), (b) modifying the scale language to reflect the character and structure of the organization, and (c) absorbing new information on job content-related requirements-then it becomes very clear that the Guide Chart-Profile Method is a process, not a fixed instrument like a physical measuring device. Further, it is a relative measurement process, not an absolute one. The theses of the Guide Chart-Profile Method thus become:

1. Every job that exists in an organizational context requires some amount of know-how, problem solving, and accountability.
2. Semantic scales reflecting degrees of these factors can be developed and applied, with consistency and with collective agreement, by any group of knowledgeable organization members after a modest amount of training.

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3. The Guide Chart-Profile Method will produce a relative rank order, and a measure of the distances between ranks, for all jobs-which the organization will accept as reflective of its own perception of their relative importance.

4. The measurement principles are timeless and will hold until there is a fundamental change in the nature of jobs and in the interrelationship of jobs that make up organizations' structures.

5. As a process guided and controlled by principles rather than by immutable rules and scales, the Guide Chart-Profile Method is adaptable to the unique character of diverse jobs and organizations in changing environments.

Were these theses not correct, the Guide Chart-Profile Method would not be in the situation of increasing use in a broadly changing world after more than 30 years. A very substantial number of organizations have relied on the process in excess of 10 years and ranging up to over 25 years. They have applied the methodology through many reorganizations and to totally new product and service divisions during long periods of enormous growth and in an environment of great social change and legal challenge to the previously established order.

While the Guide Chart-Profile Method was developed for business, industrial, and financial organizations, the theses have been proved to hold for nearly any organization. Among the long-term users are nonprofit trade, professional, charitable, and cultural organizations; federal government departments; states; municipalities; schools and universities; and hospitals within the United States and abroad. While the application is most common for exempt positions, there is widespread use for nonexempt clerical and office positions and growing use for blue-collar positions.

APPENDIX C

SENIOR PUBLIC DEFENSE ATTORNEY I

Job Summary

Provides representation and acts as lead counsel on a wide range of criminal cases. May coordinate the work and training of Attorneys and legal interns. Acts as a resource to staff on key legal issues.

Distinguishing Characteristics

Positions in the Senior Public Defense Attorney I classification are assigned a variety of felony cases, including murder, and complex fraud cases. This level has increased responsibility because of the liability to defendants, the variety of cases, and the amount of technical skills and judgment required to perform the work. Positions in the class may also coordinate the work of other Attorneys.

Essential Duties (These duties are representative and may vary by position.)

1. Defends criminal cases in Superior Court which require pretrial investigation, factual analysis, case preparation, negotiations and trial skills.
2. Provide information and assistance to other Attorneys on pre-trial issues, trial strategy and current legal issues.
3. Coordinates work of public defense Attorneys and participates in the formulation and implementation of policies and procedures.
4. May serve as training coordinator for defense Attorneys assigned misdemeanor, juvenile and felony cases; prepares and delivers seminars on legal topics and procedures, consults with Attorneys and evaluates their progress.
5. Co-counsels jury and non-jury trials with less experienced attorneys and observes and evaluates their work.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to five years of experience as a Deputy Public Defense Attorney and a Law degree.

Knowledge of the principles and practices of supervision.

Knowledge of Washington Penal Code, Welfare and Institutions Code, and related case law.

Knowledge of psychological, social and health issues related to area of assignment.

Knowledge of legal principles and their applications in various situations.

APPENDIX B

Knowledge of case law, criminal law and procedure in Washington State.

Ability to guide the work of Attorneys and interns.

Skill in planning, preparing, presenting and conducting case strategies to defend criminal cases.

Skill in conducting legal research, analysis and investigation.

Skill in interpreting and explaining codes, statutes, procedures and forms.

Skill in establishing and maintaining effective working relationships with diverse professionals, agencies, and the public.

Skill in preparing, presenting and conducting criminal cases in court.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington.

Valid Washington State Driver's License.

SENIOR PUBLIC DEFENSE ATTORNEY II

Job Summary

Provides legal counsel and defends the complex or serious criminal cases, including major capital litigation cases. Guides Attorneys and support staff and may participate in the management of the organization.

Distinguishing Characteristics

This level is distinguished from the Senior Public Defense Attorney I by the advanced trial skills and judgment required to handle cases which are complex and have potential for consequences for the defendant. Positions in this class have supervisory responsibility for the work of Attorneys.

Essential Duties (These duties are representative and may vary by position.)

1. Defends or leads the defense of complicated criminal cases requiring discretion in investigation, case strategy, trial strategy, negotiations and sentencing related decisions.
2. Supervises Attorneys and support staff, overseeing case assignments and unit policies and procedures, and may participate in the management of the organization.
3. Resolves difficult legal problems or complaints involving cases.
4. Develops and recommends policies and procedures and may participate in the formulation of policies and processes.
5. Assists in the selection, hiring and training of staff.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to two years of experience as a Senior Public Defense Attorney I and a Law degree.

Knowledge of Washington Penal Code, Welfare and Institutions Code, and related case law.

Knowledge of psychological, social and health issues related to area of assignment.

Skill in administration and management areas.

Skill in planning, preparing, presenting and conducting case strategies to defend criminal cases.

Skill in advising clients of diverse racial, cultural and socio-economic backgrounds.

Skill in conducting legal research, analysis and investigation.

Skill in interpreting and explaining codes, statutes, procedures and forms.

Skill in establishing and maintaining effective working relationships with diverse professionals, agencies, and the public.

Skill in managing case loads and maintaining appropriate records, logs and case files.

Skill in preparing, presenting and conducting criminal cases in court.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington.

Valid Washington State Driver's License.

SENIOR PUBLIC DEFENSE ATTORNEY III

Job Summary

Provides legal counsel and defends the most complex or serious criminal or civil cases, including major capital litigation cases. Directs a unit of Attorneys and support staff and participates in the management of the organization.

Distinguishing Characteristics

This job/class is distinguished from the Senior Public Defense Attorney II class by the extensive and advanced trial skills and independent judgment required to handle cases which are complex, politically sensitive and have potential for severe consequences for the defendant. Positions in this class have management responsibility for supervision of Attorneys with a complex case load.

Essential Duties (These duties are representative and may vary by position.)

1. Defends or leads the defense of highly complicated and sensitive criminal cases requiring wide discretion in investigation, case strategy, trial strategy, negotiations and sentencing decisions.
2. Directs a unit of Attorneys and support staff, supervising case assignments and unit policies and procedures, and participating in the management of the organization.
3. Resolves difficult or controversial legal problems or complaints involving cases conducted within the unit.
4. Develops and recommends unit policies and procedures and participates in the formulation and implementation of policies and processes.
5. Assists in the selection, hiring and training of staff.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to two years of experience as a Senior Public Defense Attorney II and a Law degree.

Knowledge of managerial principles and practices.

Knowledge of Washington Penal Code, Welfare and Institutions Code, and related case law.

Knowledge of psychological, social and health issues related to area of assignment.

Skill in administration and management of staff and services.

Skill in planning, preparing, presenting and conducting case strategies to defend complex criminal cases.

Skill in advising clients of diverse racial, cultural and socio-economic backgrounds.

Skill in conducting legal research, analysis and investigation.

Skill in interpreting and explaining codes, statutes, procedures and forms.

APPENDIX B

Skill in establishing and maintaining effective working relationships with diverse professionals, agencies, and the public.

Skill in managing complex case loads and maintaining appropriate records, logs and case files.

Skill in preparing, presenting and conducting criminal cases in court.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington.

Valid Washington State Driver's License.

APPENDIX D



King County

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**OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY – JOB/CLASS DESCRIPTION**

SENIOR DEPUTY PROSECUTING ATTORNEY I

Job Summary

The Senior Deputy Prosecuting Attorney levels are assigned based on the depth and breadth of professional knowledge and demonstrated contributions to the Office. All assignments to these levels are recommended by the Division Chief and approved by the Prosecuting Attorney.

This job provides legal representation in a wide range of criminal proceedings. Prepares and prosecutes cases requiring considerable knowledge, technical expertise and legal skills. The job provides legal counsel to assigned areas and provides guidance to Deputy Prosecuting Attorney levels and support staff.

Distinguishing Characteristics

The positions in this level are assigned a variety of criminal cases. The Senior Deputy Prosecuting Attorney I level investigates and prosecutes criminal areas of a complex and sensitive nature. This level has increased responsibility above the Deputy Prosecuting Attorney levels because of the impact of the cases assigned, the increased complexity of the case load, and the depth of technical skill and judgment required to perform the work. The positions in the class may coordinate the work of Deputy Prosecuting Attorneys.

Essential Duties (These duties are representative and may vary by position.)

1. Prosecutes complex criminal cases in superior Court which require considerable pre-trial investigation, factual analysis, case preparation, negotiations and trial skills.
2. Coordinates and conducts the drafting, negotiation and related aspects of criminal cases.
3. Provides guidance to Deputy Prosecuting Attorneys within the Criminal Division.
4. Provides information and assistance to police officers and other Prosecuting Attorneys on pre-trial issues, trial strategy and related areas.
5. Within policies and practices answers questions and provides information to news media on cases and issues of interest to the public.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to five years of experience as a Deputy Prosecuting Attorney in the King County Prosecuting Attorney Office and a Law degree.

Knowledge of trial principles and practices.

Knowledge of criminal law and related statutes, ordinances, case law, and procedures.

Knowledge of the duties, powers, limitations and responsibilities of the Prosecuting Attorney's Office.

APPENDIX B

Ability to provide guidance to other Attorneys and paraprofessionals.

Skill to conduct legal research, analysis and investigation of complex and sensitive criminal cases.

Skill in planning, preparing, presenting and conducting case strategies to prosecute criminal cases.

Skill in trials of varying complexity.

Skill in interpreting and explaining policy and law to officials, governing bodies, and other people.

Skill in managing case loads and maintaining appropriate records, logs and case files.

Skill in establishing and maintaining effective working relationships with diverse professionals, administrative groups, and the public.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington

Valid Washington State Driver's License



King County

09/06

OFFICE OF THE PROSECUTING ATTORNEY KING COUNTY – JOB/CLASS DESCRIPTION

SENIOR DEPUTY PROSECUTING ATTORNEY II

Job Summary

The Senior Deputy Prosecuting Attorney levels are assigned based on the depth and breadth of professional knowledge and demonstrated contributions to the Office. All assignments to these levels are recommended by the Division Chief and approved by the Prosecuting Attorney.

This job provides legal counsel or prosecutes a wide range of criminal cases where considerable knowledge, technical expertise and legal skills are required. Provides guidance to Deputy Prosecuting Attorney levels and support staff.

Distinguishing Characteristics

This job/class is distinguished from the Senior Deputy Prosecuting Attorney I level by an increased level of knowledge and trial skills and independent judgment required to handle criminal cases. Positions at this level provide additional guidance to Deputy Prosecuting Attorneys in challenging and difficult cases.

Essential Duties (These duties are representative and may vary by position.)

1. Prosecutes and/or leads the prosecution of a variety of criminal cases requiring discretion in investigation, filing, case strategy and trial strategy.
2. Provides guidance to Deputy Prosecuting Attorneys and support staff; oversees and reviews the work of assigned staff, providing training and assistance as needed.
3. Resolves difficult or challenging legal problems or complaints involving assigned cases.
4. Provides ideas and information related to unit policies and procedures and participates in the formulation of Division policies and processes.
5. Within policies and practices answers questions and provides information to news media on cases and issues of interest to the public.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to two years of experience as a Senior Deputy Prosecuting Attorney I in the King County Prosecuting Attorney's Office and a Law degree.

Knowledge of trial principles and practices.

Knowledge of criminal law and related statutes, ordinances, case law, and procedures.

Knowledge of the duties, powers, limitations and responsibilities of the Prosecuting Attorney's Office.

Skill in providing guidance to Deputy Prosecuting Attorneys and support staff.

APPENDIX B

Skill to conduct legal research, analysis and investigation of complex and sensitive criminal cases.

Skill in planning, preparing, presenting and conducting case strategies to prosecute criminal cases.

Skill in trials of varying complexity.

Skill in interpreting and explaining policy and law to officials, governing bodies, and other people.

Skill in managing case loads and maintaining appropriate records, logs and case files.

Skill in establishing and maintaining effective working relationships with diverse professionals, administrative groups, and the public.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington.

Valid Washing State Driver's License.



King County

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**OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY – JOB/CLASS DESCRIPTION**

SENIOR DEPUTY PROSECUTING ATTORNEY III

Job Summary

The Senior Deputy Prosecuting Attorney levels are assigned based on the depth and breadth of professional knowledge and demonstrated contributions to the Office. All assignments to these levels are recommended by the Division Chief and approved by the Prosecuting Attorney.

Supervises other Attorneys and support staff and assists in the administration of a Division where thorough knowledge, technical expertise and legal skills are required.

This job reviews, prepares and prosecutes complex and high-profile criminal cases in the Prosecuting Attorney's Office and participates in major case decision making.

Distinguishing Characteristics

This job/class is distinguished from the Senior Deputy Prosecuting Attorney II by the level of advanced trial skills and thorough legal expertise that is required to perform the work. Additional skill and responsibility is required to provide supervisory direction in assigned areas. There is increased responsibility because of the impact of the cases assigned to positions at this level.

Essential Duties (These duties are representative and may vary by position.)

1. Supervises and counsels Attorneys in matters of law and trial strategies and tactics.
2. Leads and/or conducts the prosecution of complex cases in the Prosecuting Attorney's Office which include those of substantial public interest or those involving complicated and technical legal issues and principles.
3. Provides guidance to Attorneys and support staff; provides training and assistance to staff, assigns and reviews the work, and approves approaches in cases.
4. Participates in the development of Division policies and procedures.
5. Within policies and practices answers questions and provides information to news media on cases and issues of interest to the public.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to two years of experience as a Senior Deputy Prosecuting Attorney II in the King County Prosecuting Attorney's Office and a Law degree. The assignment to the Senior Deputy Prosecuting Attorney III is based on the individual's contributions and value added accountabilities beyond the expected responsibilities at the Senior Deputy Prosecuting Attorney II level.

Knowledge of trial managerial principles and practices.

Knowledge of criminal law and related statutes, ordinances, case law, and procedures.

APPENDIX B

Knowledge of the duties, powers, limitations and responsibilities of the Prosecuting Attorney's Office.

Ability to effectively participate in management of the Division.

Skill in guiding and providing leadership to other Attorneys and support staff

Skill to conduct legal research, analysis and investigation of complex criminal cases.

Skill in planning, preparing, presenting and implementing strategies to prosecute complex criminal cases.

Skill in trials involving complex cases.

Skill in interpreting and explaining policy and law to officials, governing bodies, and other people.

Skill in managing complex case loads and maintaining appropriate records, logs and case files.

Skill in establishing and maintaining effective working relationships with diverse professionals, administrative groups, and the public.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington.

Valid Washing State Driver's License.



King County

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**OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY – JOB/CLASS DESCRIPTION**

SENIOR DEPUTY PROSECUTING ATTORNEY IV

Job Summary

The Senior Deputy Prosecuting Attorney levels are assigned based on the depth and breadth of professional knowledge and demonstrated contributions to the Office. All assignments to these levels are recommended by the Division Chief and approved by the Prosecuting Attorney.

This job functions as a seasoned leader within the Division with an integral role in the Prosecuting Attorney's Office operations. Directs highly specialized Attorneys with responsibility for a variety of criminal cases that require extensive knowledge, technical expertise and legal skills. The job also directly participates in the prosecution of selected cases.

Distinguishing Characteristics

This job/class is a significant level in the Prosecuting Attorney Office. The job is distinguished from the Senior Deputy Prosecuting Attorney III, by both its management and administrative responsibilities and it also provides direct participation in selected criminal cases requiring extensive knowledge and skill.

Essential Duties (These duties are representative and may vary by position.)

1. Directs Attorneys performing complex criminal work: assigns work and oversees all phases of cases, including the approval of all settlements and trial related decisions.
2. Performs direct trial work related to cases which have public interest and/or potential precedential concern.
3. Assists in the guidance of the Division of the Prosecuting Attorney's Office.
4. Directs the distribution of work, participates in planning and recommends Division policies and procedures.
5. Coordinates Division activities with those of other divisions and agencies.
6. Within policies and practices answers questions and provides information to news media on cases and issues of interest to the public.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to two years of experience as a Senior Deputy Prosecuting Attorney III in the King County Prosecuting Attorney's Office and a Law degree. The assignment to the Senior Deputy Prosecuting Attorney IV is based on the individual's contributions and value added accountabilities beyond the expected responsibilities at the Senior Deputy Prosecuting Attorney III level.

Knowledge of trial managerial principles and practices.

Knowledge of criminal law and related statutes, ordinances, case law, and procedures.

APPENDIX B

Knowledge of the duties, powers, limitations and responsibilities of the Prosecuting Attorney's Office.

Skill to effectively participate in management of the Division.

Skill in guiding Division staff and programs.

Skill to conduct legal research, analysis and investigation of complex and sensitive criminal cases.

Skill in trials involving complex cases.

Skill in interpreting and explaining policy and law to officials, governing bodies, and other people.

Skill in managing complex case loads and maintaining appropriate records, logs and case files.

Skill in establishing and maintaining effective working relationships with diverse professionals, administrative groups, and the public.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington.

Valid Washing State Driver's License.



King County

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**OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY – JOB/CLASS DESCRIPTION**

SENIOR DEPUTY PROSECUTING ATTORNEY V

Job Summary

The Senior Deputy Prosecuting Attorney levels are assigned based on the depth and breadth of professional knowledge and demonstrated contributions to the Office. All assignments to these levels are recommended by the Division Chief and approved by the Prosecuting Attorney.

This job functions as the most seasoned level with a mastery of the criminal law areas. In addition the job is involved in the operations of the Prosecuting Attorney's Office. Directs highly specialized Attorneys with responsibility for high-level or high-profile criminal cases.

Distinguishing Characteristics

This job/class is the highest level in the Deputy Prosecuting Attorney series. It is distinguished from the Senior Deputy Prosecuting Attorney IV, by its level of mastery in criminal law areas and management accountabilities.

Essential Duties (These duties are representative and may vary by position.)

1. Directs Attorneys performing complex criminal work: assigns work and oversees all phases of major cases, including the approval of all settlements and trial related decisions.
2. Directs the distribution of work, participates in planning and budgeting, and recommends and implements Division policies and procedures.
3. Participates in making Division personnel decisions, provides training and guidance to staff.
4. Manages a criminal case load which has public interest and potential precedential concern; performs direct trial work related to major, selected cases.
5. Coordinates Division activities with those of other divisions and agencies.
6. Advises staff, officials and law enforcement agencies on legal issues and procedures involved in the administration of Division programs.
7. Within policies and practices answers questions and provides information to news media on cases and issues of interest to the public.

Knowledge/Skills (These are entry requirements and may vary by position.)

Knowledge of legal principles and concepts equivalent to two years of experience as a Senior Deputy Prosecuting Attorney IV in the King County Prosecuting Attorney's Office and a Law degree. An assignment to the Senior Deputy Prosecuting Attorney V is based on the individual's contributions and value added accountabilities beyond the expected responsibilities at the Senior Deputy Prosecuting Attorney IV level.

Knowledge of trial managerial principles and practices.

APPENDIX B

Knowledge of criminal law and related statutes, ordinances, case law, and procedures.

Knowledge of the duties, powers, limitations and responsibilities of the Prosecuting Attorney's Office.

Skill in administration and management of Division staff and programs.

Skill to conduct legal research, analysis and investigation of complex and sensitive criminal cases.

Skill in trials involving difficult and complex cases.

Skill in interpreting and explaining policy and law to officials, governing bodies, and other people.

Skill in managing complex case loads and maintaining appropriate records, logs and case files.

Skill in establishing and maintaining effective working relationships with diverse professionals, administrative groups, and the public.

Licensing/Certification Requirements

Member in good standing of the State Bar of Washington.

Valid Washington State Driver's License.

King County Office of the Public Defender
Independent Technology for OPD Contractors

Situational Analysis and Recommendations

January 24, 2007



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Document Purpose

This document describes the current technical environment for each King County Office of the Public Defender (OPD) contracting agency. It also presents an alternatives analysis and recommendations for the future connection of these agencies to the King County applications needed for their day-to-day operations.

Version	Date	Description/Changes
1.0	12/22/06	Initial draft.
2.0	1/17/07	Revisions based on OPD feedback.
3.0	1/24/07	Final edits based on OPD management input and correction of typographical errors.



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Appendix A – Interviewees

Appendix B – Financial Impacts of Each Alternative

I. Introduction



I. Introduction

The Office of the Public Defender (OPD) is one of four divisions of the King County Department of Community and Human Services. OPD determines the qualification level for legal services to individuals who are accused of a crime or involved in certain civil proceedings in a King County court and who cannot afford an attorney. OPD does not directly provide the legal representation. Rather, it assigns and manages the relationship between the clients and the nonprofit legal agencies that provide the direct legal representation.

A. Project Background

OPD is supported by four nonprofit law firms performing the majority of public defense services for King County. As a part of this relationship, these firms are afforded access to the King County Wide Area Network (KC WAN) to enable:

- Information sharing.
- Court case database access.
- E-mail.
- Access to other facilities.

Efficient criminal judicial operations depend on appropriate and secure electronic information and application sharing between prosecution and defense teams.

King County is seeking to move the OPD contracting agencies outside the KC WAN. Key among the motivating events are two occurrences of an agency inadvertently introducing a virus into the King County network. By OPD estimates, this disabled a substantial portion of the county network for approximately a day. The county wishes to eliminate this technical and financial risk. However, it does not want to degrade the connectivity or functionality currently available to the contractors.

This document describes how each contractor currently uses the King County IT resources, and it provides the alternatives for moving these contractors outside the KC WAN.

B. Objectives

This project sought to provide the background information, alternatives, and recommendations for moving the contracting agencies outside the KC WAN. MTG Management Consultants, LLC, achieved this in three basic steps:

- *Current Environment* – Information about the current environment, including business application use and technical connectivity information, was gathered from King County, application providers, and the four contractors.



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- *Alternatives Analysis* – Using the information about the current environment, the project team developed alternatives for transitioning the contractors off the KC WAN. The team evaluated each alternative and how the alternative would change the current operations for the contractors.
- *Recommendations* – In the final step of the process, the alternatives analysis results were compiled in a report to provide an explanation of the best option for OPD to use for moving the agencies outside the KC WAN.

These three steps have provided OPD with the information needed to make an informed strategic decision when moving forward with the network change and to ensure the stakeholders that business operations will not change the efficiency and level of service to the clients.

C. Scope

For this project, the scope included the current capabilities of the four contracting agencies and two to three alternatives for moving the contractors off the KC WAN. The analysis of both the current capabilities and the alternatives examined the following areas:

- Applications and functions supported.
- Network connectivity.
- Service levels.
- Licensing and hardware.
- Organizational model.
- Key policies.
- Financial impacts.

After the review of the alternatives, this document includes a recommendation of the best-fit alternative.

D. Document Organization

The remainder of this document is presented in four sections:

- *Current Operating Model* – Documents the business environment basics, describes each contracting agency's technology environment, and provides a summary table for comparison purposes.
- *Alternative Models* – Provides a description of each alternative.



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- *Alternatives Analysis* – Analyzes the positives and negatives of each alternative.
- *Findings/Recommendations* – Presents the findings and recommendations from the current environment and alternatives analysis.

In addition, this document contains two appendices. APPENDIX A lists project stakeholders interviewed prior to the development of this document. APPENDIX B presents the financial impacts of each alternative.



II. Current Operating Model



II. Current Operating Model

To understand the options for transitioning the OPD contracting agencies off the KC WAN, the project first documented how IT supports the business process for OPD and its contractors.

A. Key Business Milestones

OPD and its contracting agencies are responsible for providing a quality and effective defense to every eligible person, as is every person's right and protection under the Constitution and Bill of Rights. There are a few key business milestones the contractors must meet that are monitored by OPD.

The first key milestone is for the King County Prosecuting Attorney's Office to file charges and notify OPD of those charging documents. Once OPD receives notice, it will assign the case to the appropriate contractor. The contractor that is assigned the case then has five business days to contact (face to face or via a letter) the client whom the Prosecuting Attorney's Office named in the charging document. Also, the contractor has five to ten business days from the date of assignment to perform a conflict of interest check. A conflict of interest check includes the following:

- The contractor has five business days to request discovery.
- The contractor has five business days from when discovery is provided to review discovery.

The total time from assignment to notification that there is a conflict of interest is 14 calendar days. The IT, applications, and infrastructure need to support these key milestones in a timely and efficient manner.

B. Key Policies

The use of King County resources by contracting agencies is subject to policies from OPD, the county, and application providers. These policies determine what IT resources will be provided and what constraints will apply.

1. OPD Policy

OPD information systems management policy addresses the use of OPD and King County IT resources by contracting agencies to improve the productivity of contractor staff and provide a vehicle for the exchange of business-related information between the contractors and the county. The policy applies to the following resources:

- PC HOMER database.



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- Prosecutor's Management Information System (PROMIS) database.
- District and Municipal Court Information System (DISCIS) database.
- Superior Court Management Information System (SCOMIS) database.
- Agency service data.
- Access to non-Web-based systems via OPD.
- Three networks:
 - » OPD Local Area Network (LAN).
 - » KC WAN.
 - » Government Trusted Network (GTN) (Access Washington).

Under this OPD policy the contractors are required to develop plans or policies addressing:

- Information security and confidentiality.
- Data security.
- Personnel security.
- Physical security.
- Data security.
- Access security.
- Computer viruses.

While agencies are required to develop these plans and policies, there is no effective means in place to ensure that they do so; nor is there a mechanism to ensure that the plans/policies are adequate and are effectively implemented.

2. King County Policy

The material policy affecting the contractors concerns KC WAN access. According to the work order for this project, King County would prefer to have the contractors removed from the network for security reasons.

3. King County Superior Court Record Policies

One of the most useful applications utilized by contractors is Electronic Court Records (ECR) Viewer. This application provides access to court records via the KC WAN. It is subject to the local rules of the King County Superior Court. Key among the rules are those concerning fees and records access. They include:



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- The Superior Court charges for copies of court records. For those accessing court records over the Internet, a charge is assessed for each document image viewed (and potentially printed). Fee exemptions are identified by statute, and there are no fee exemptions provided for defense counsel.
- In October 2004, the Superior Court implemented filing procedures that provide safeguards for personal and financial information filed with the courts. Court records (both manual and automated) filed before October 2004 may contain such information in a manner that allows access. In an effort to control access to this information, the Superior Court does not allow access to these records through the public access portal ECR Online.

The Superior Court rules are silent with regard to access through the KC WAN. Individuals with access to the KC WAN, including OPD contractor staff, are effectively "grandfathered" and provided access to automated records and services not available to other defense counsel. Under this arrangement these capabilities are provided free of charge.

The Superior Court will review its electronic court record policies in the first quarter of 2007. This review will consider restrictions on access via the KC WAN by non-court personnel and revisions to user fees.

C. Supporting Organizations

Several organizations are involved in and responsible for supporting the business process and the related IT. Those organizations and their responsibilities are as follows:

- *OPD* – Manages the contracting agencies and ensure that each contractor is given the necessary information in a timely manner in order to meet the key business milestones.
- *Department of Community and Human Services, Mental Health, Chemical Abuse and Dependency Services Division (DCHS MHCADSD) IT* – Provides application support when contractors do not have IT support services in their facilities.
- *Contracting Agencies* – Provide legal services to the clients of OPD. These contractors also use the applications and infrastructure of King County in order to gather information needed to prepare a proper defense in a timely manner.
- *King County Information Technology Services Office (ITSO)* – Provides the infrastructure, networking hardware, and support for the network components depending on the contractor's current technical environment (see subsections F through I below for a description of each contractor's current technical environment).
- *Washington State Administrative Office of the Courts (WA AOC)* – Provides access and support for the Judicial Information System (JIS) -LINK for OPD and its contractors.



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These agencies participate and have responsibilities within the business process to ensure a fair, knowledgeable, and effective legal defense for those who meet the financial criteria for a court-appointed legal defense.

D. Financial Model

OPD has built a line item for desktop replacement into its cost model for each contracting agency. The model currently does not define how specifically this line item can be used by the contractor, but the contractor does receive the amount of money each year. The agencies were provided \$2,765 per year per professional FTE and \$1,359 per year per nonprofessional FTE in consideration of direct overhead costs, such as insurance, professional licenses, and desktop replacement every 4 years.

E. Contracting Agency Organization

Many resources are used to help collect the information needed to put together defenses for cases. The basic organizational description for each agency is provided below.

1. Associated Counsel for the Accused

Associated Counsel for the Accused (ACA) was contracted with OPD for 67.9 FTEs for 2006. There are two locations, with the primary location located at 110 Prefontaine Place South, Suite 200, Seattle. ACA has selected to have no IT support at this time.

2. Northwest Defenders Association

Northwest Defenders Association (NDA) was contracted with OPD for 40.66 FTEs for 2006. It is located at 1111 3rd Avenue, Suite 200, Seattle. NDA has selected to contract out its IT support to Seitel Leeds & Associates.

3. Society of Counsel Representing Accused Persons

Society of Counsel Representing Accused Persons (SCRAP) was contracted with OPD for 73.51 FTEs for 2006. There are two locations, with the primary location located at 1401 East Jefferson Street, Suite 200, Seattle. SCRAP has selected to have 1 internal IT support FTE.

4. The Defender Association

The Defender Association (TDA) was contracted with OPD for 78.2 FTEs for 2006. There are five locations, with the primary location located at 810 3rd Avenue, Suite 800, Seattle. TDA has selected to have 1 internal IT support FTE.



F. Applications and Functions

Several state, county, and local applications are used within each contracting agency. The contractors use these applications to save time and money while meeting the key business milestones and providing a proper defense for each case. Without a computer connection and access to these systems in their offices, contractors would have to send paralegals and support staff to the courthouses to stand in line to retrieve and check out a court case information file (that may be checked out and unavailable at that time) and then to make a copy of the file to take back to the attorney for review.

1. State Application

There is one application provided by WA AOC; however, this application actually provides access to two applications.

JIS-LINK – Provides access to all court cases in district courts throughout Washington State (via DISCIS) and to all superior court cases (via SCOMIS). The contractors seek the following data points from JIS-LINK:

- Status of court cases.
- Parties involved.
- Contact information (addresses, phone numbers, and locations).
- Victims.
- Scheduling and transport of clients.
- Case coordination.
- Aliases.
- Verification that clients have provided accurate information.
- Financial information.

2. County Applications

There are two applications provided by county departments: Jail Locator (King County Department of Adult and Juvenile Detention) and ECR (King County Department of Judicial Administration).

Jail Locator – Provides access to information within the King County Jail Management System. The contractors seek the following data points from Jail Locator:

- County Case Number (CCN).
- Birth date.



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- Other holds.
- Location.
- Release information.
- Booking information (and photo).
- Accurate dates and times for verification.

ECR – Provides access to King County court cases. ECR includes all documents from most cases that were opened in 2000 forward, as well as from some older court cases. The contractors seek the following data points from ECR:

- Hearing dates.
- Case information.
- Attorney on record.
- Entire docket.
- Older case information for probation cases and three-strike cases.

These records can be viewed over the King County WAN using the ECR Viewer application. There is also a small public access portal referred to as ECR Online. This application allows users to view a limited set of the cases in the King County Superior Court. By court agreement, ECR Online allows access to cases in three case type areas that were opened since General Rule 31 was passed in October 2004:

- Adult Criminal.
- General Civil, except for cases involving domestic violence or antiharassment restraining orders.
- Probate, except for cases involving guardianship.

3. City Application

There is one application provided by the Municipal Court of Seattle:

Municipal Court Information System (MCIS) – Provides information on municipal court cases, although they are a small percentage of the caseload for contractors. The contractors seek the following data points from MCIS:

- Hearing dates.
- Case information.



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- Attorney on record.
- Entire docket.
- Older case information for probation cases and three-strike cases.

G. Network Connectivity

There are many components and methods that contracting agencies use to connect to the KC WAN. These components include but are not limited to router ownership and Internet connectivity. Below is a description of how each agency is currently set up to connect to the KC WAN.

1. ACA

King County has provided a router at the primary ACA location. This router is connected directly into the KC WAN over a 100 Mb connection to the Yesler facility. ACA is connected directly into the KC WAN at the Kent location. All connection costs are paid by the county. Internet access from both locations is provided by the county through the WAN connection.

2. NDA

King County has provided a router at the primary NDA location. NDA paid for the cost of the installation for the T1 connection. Monthly costs are paid by the county. Internet access from this location is provided by the county through the WAN connection. NDA uses a DSL line at the Kent location and pays for the connection.

3. SCRAP

King County has provided a router at the primary SCRAP location. This router is connected directly into the KC WAN over a 100 Mb TLS connection. SCRAP is connected directly into the KC WAN at the Kent location. Internet access from both locations is provided by Speakeasy, Inc., and paid for by SCRAP.

4. TDA

King County has provided a router at the primary TDA location. This router is connected directly into the KC WAN over a 100 Mb transparent LAN service (TLS) connection. TDA is connected directly into the KC WAN at the Kent location. All connection costs are paid by the county. Internet access from both locations is provided by the county through the WAN connection.

H. Service Levels

Supporting a complex infrastructure like the KC WAN takes a team of individuals and agreements between contracting agencies. However, during this project it was discovered that there are no Service Level Agreements for each contractor and no performance



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monitoring of the applications between the contractors and King County. County support consists of e-mail account creation and county-specific application password resets for users at each contractor.

I. Licensing

Applications can require licensing. There are several types of licensing, including site licenses, which provide one license for an entire site, and seat licenses, which provide one specific license per desktop. The licensing arrangement for each application is listed below.

1. ECR Viewer

Currently ECR Viewer does not require licensing. If an individual is on the KC WAN and the Department of Judicial Administration has provided a user name and password, then ECR Viewer can be accessed.

In addition, ECR Online does not require licensing. This is a public access portal to the public information located in the King County court system.

2. Jail Locator

Jail Locator does not require licensing. This is a public access portal to the public information located in the Jail Management System.

3. JIS-LINK

A user agreement is signed by each specific user of JIS-LINK. There is no licensing fee attached to the agreements.

4. E-Mail

E-mail is used by all of the agencies. Most of the agencies have obtained application licenses and their own e-mail domain names. They include:

- NDA licenses for *nwdefenders.org*.
- SCRAP licenses for *scraplaw.org*.
- TDA licenses for *defender.org* and uses King County licenses for *metrokc.gov*.
- ACA uses King County licenses for *metrokc.gov*.

5. Directory Services

A directory server maintains a registry of individuals, their e-mail address or addresses, and other information about the individual. One of its functions is to help e-mail programs



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identify where to route e-mail. Most of the agencies have made arrangements for directory services.

- NDA provides licenses for Active Directory and directory services within the agency.
- SCRAP provides licenses for Active Directory and directory services within the agency.
- TDA partially licenses Active Directory and directory services, with King County licensing the remaining.
- ACA relies on King County for Active Directory and directory services licensing.

6. Operating System and Microsoft Office

King County initially provided some desktops that include an operating system and a version of Microsoft Office. There has been no specific tracking by the contracting agencies or the county for the location, maintenance, and upgrades since those systems were provided. These licensing agreements are between Microsoft and the contracting agencies. King County IT is no longer involved or responsible for these licenses.

7. Hardware and Software

Some of the agencies have obtained their own hardware and software to operate e-mail and directory services. While all agencies have a King County owned router, some have hardware to connect to the Internet.

ACA does not have an e-mail server, directory server, or router/firewall. ACA also does not have e-mail server and client licenses or a directory server license. NDA, SCRAP, and TDA all have their own e-mail servers, directory servers, routers/firewalls, and the associated licenses.

J. Summary of Contracting Agencies

Table 1 provides a comparative summary of the current environment information.



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Table 1 – Comparative Summary of Services, Capabilities, and Features by Contractor

	ACA	NDA	SCRAP	TDA
Organization				
FTEs	67.9	40.66	73.51	78.2
IT Support FTEs	0	.50 ¹	1	1
Type of IT Support	N/A	External	Internal	Internal
Primary Location	110 Prefontaine Place South, Suite 200, Seattle	1111 3rd Avenue, Suite 200, Seattle	1401 East Jefferson Street, Suite 200, Seattle	810 3rd Avenue, Suite 800, Seattle
Secondary Location	420 West Harrison Street, Suite 201, Kent	1211 East Alder Street, Seattle	420 West Harrison Street, Suite 101, Kent	420 West Harrison Street, Suite 202, Kent
Other Location				Harborview Hall, Room 117C, 325 9th Avenue, Seattle
Other Location				1120 East Terrace Street, Suite 200, Seattle
Applications				
JIS-LINK	✓	✓	✓	✓
Jail Locator	✓	✓	✓	✓
ECR Viewer	✓	✓	✓	✓
MCIS	✓	✓	✓	✓
Network Connectivity				
Router	King County	King County	King County	King County
Internet Connectivity	King County	King County	SCRAP	King County
Payment for Connection	King County	King County	SCRAP	King County
Service Levels				
Service Level Agreements	None	None	None	None
Performance Monitoring	None	None	None	None
King County	Limited	Limited	Limited	Limited

¹ Seitel Leeds provides once a week or once every other week support (less than .25 FTE) and NDA's HR and Accounting resource also provides the application support (.33 of FTE) for the agency.



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	ACA	NDA	SCRAP	TDA
Support				
Agency Support	None	✓	✓	✓
Licensing				
ECR Viewer	None	None	None	None
ECR Online	N/A, Public Access	N/A, Public Access	N/A, Public Access	N/A, Public Access
Jail Locator	N/A, Public Access	N/A, Public Access	N/A, Public Access	N/A, Public Access
JIS-LINK	User Agreement	User Agreement	User Agreement	User Agreement
E-Mail	Licensed by King County	Licensed by NDA	Licensed by SCRAP	Licensed by TDA and King County
Directory Services	Licensed by King County	Licensed by NDA	Licensed by SCRAP	Licensed by TDA and King County

For more details, please refer to subsections E through I above.

III. Alternative Models

III. Alternative Models

We crafted three alternatives for maintaining current operations afforded to the OPD contracting agencies while moving them off the KC WAN. This analysis is being developed in a dynamic environment:

- Some contractors are transitioning themselves.
- At least one application provider is reconsidering its policies and service offerings.

To isolate these changes, the first alternative was developed to maintain the status quo as well as possible. This alternative is used as a benchmark. The remaining alternatives use different technical approaches to transition the contractors off the KC WAN. For each alternative, we considered:

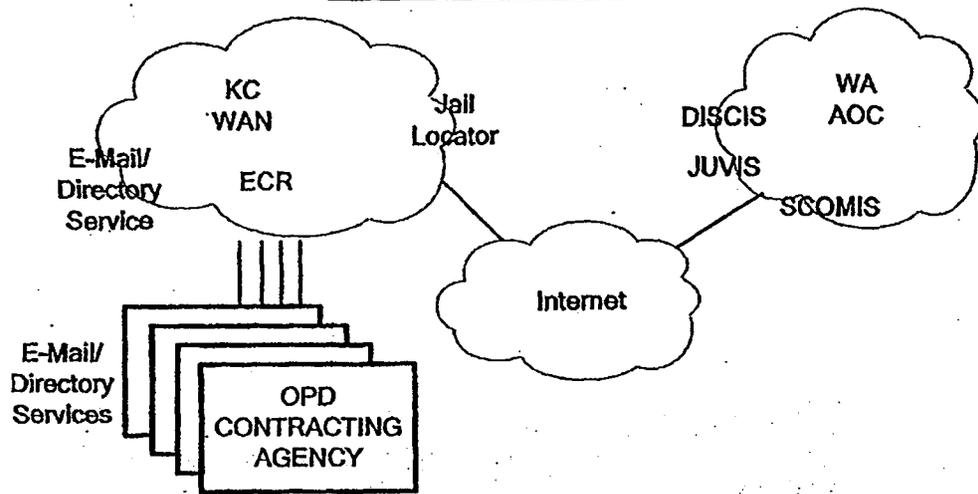
- Applications and Functions Supported
- Network Connectivity
- Service Levels
- Licensing and Hardware
- Organizational Model
- Key Policies
- Financial Impacts

These alternatives are presented in the remaining sections of the document.

A. No Change Model

This alternative attempts to maintain the status quo for the contracting agencies, and it is presented to provide a baseline for comparison of the likely future environments. Under this alternative, the contractors would remain directly connected to the KC WAN. Access would be unrestricted. ECR Viewer would be accessed directly over the internal network. DISCIS, SCOMIS, Juvenile Court Information System (JUVIS), and Jail Locator would be accessed through the KC WAN to the public Internet. Some contractor employees would utilize county e-mail services. Some contractors would use the KC WAN for backups, local applications, and file transfers. This is depicted in Figure 1.

Figure 1 – No Change Model



However, as with the other alternatives, contractor access to ECR Viewer may be restricted. In addition, the contractors may be required to pay fees for access to the court documents from ECR Viewer. This alternative is more fully described below.

1. Applications and Functions Supported

This alternative provides access to all of the functions and applications currently provided to the contractors. The specifics by application are:

- King County applications available through the KC WAN:
 - » Jail Locator.
 - » ECR Viewer.

It is important to note that the King County Superior Court will review internal access to ECR in the first quarter of 2007. While the Superior Court has historically allowed materially full and free access to ECR Viewer to anyone on the KC WAN, it is considering whether to significantly limit that internal access. It may require compliance with the court rule even if access is via the KC WAN. This could result in restricted access to cases from November 2004 forward and in fees for contractor access to court documents.

- Washington State applications:
 - » DISCIS would be available on the KC WAN.
 - » SCOMIS would be available on the KC WAN.



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- Active Directory and e-mail:
 - » Three of the four contractors would continue to maintain their own e-mail and directory services. Active Directory lists would continue to be shared between the contractors and King County.
 - » King County would continue to provide e-mail and directory services to the remaining contractor.
- Other applications:
 - » Other applications, such as local case management systems (CMSs) and backups would be considered out of the scope of services to be provided by OPD or King County and would be the responsibility of the contractors.

While this alternative provides access to all the functions and applications currently provided to the contractors, it is likely that ECR Viewer access will be constrained and fees will be charged to the contractors.

2. Network Connectivity

Under this alternative, contractors would remain on the KC WAN. Connections would remain as identified in the current environment.

3. Service Levels

There are no existing service level agreements. None would be developed under this alternative.

4. Licensing and Hardware

This alternative does not require licensing or hardware changes.

5. Organizational Model

This alternative does not specify any change in organizations providing support to the contractors. However, changes in the operations of ECR may change the organization in the court that supports users of that application.

6. Key Policies

This alternative does not comply with King County policies and intentions to move the contractors off the KC WAN. In addition, it is not consistent with court rules concerning electronic access to court records, providing contractors free access to ECR documents and access to cases prior to November 2004. This is a level of service not provided to other (private) defense counsel.



7. Financial Impacts

For the alternatives analysis, this alternative sets the financial baseline. The baseline financial assumptions are that:

- All contractors are responsible for desktop costs, including PCs, office automation (e.g., Microsoft Office), CMSs, and LAN management and support.
- It is the contractor's responsibility to maintain the currency and viability of its IT resources within its current budget.

As shown in the Alternative 1 financial analysis table in APPENDIX B, the financial analysis considers the changes in cost from the current environment for the five organizations involved in and impacted by the contractors potentially transitioning off the KC WAN:

- King County (including OPD and County Office of Information Resource Management [OIRM]).
- King County Superior Court.
- Each of the four contractors.

Under this alternative, the only anticipated financial change is the imposition of fees for the ECR Viewer by the Superior Court. The amount (a 5-year total of over \$1,000,000) is based on assumptions about the number of cases processed and documents requested at the current fee structure. The number of documents requested is situational and may financially impact some agencies more than others. This estimate also factors in uncertainty about whether the Superior Court will impose these fees. The estimated likelihood of doing so is assumed to be 75 percent, and the 5-year cost reflects that. The key issue in this analysis is that there is likely to be some change in fees for access to ECR, no matter which alternative is chosen.

In addition, the County remains subject to the risk of security breaches and incidents such as viral attacks inadvertently introduced by one of the agencies. The financial impacts to the county of 2 previous viral attacks were significant. The likelihood and financial impact potential incidents under this alternative were not estimated.

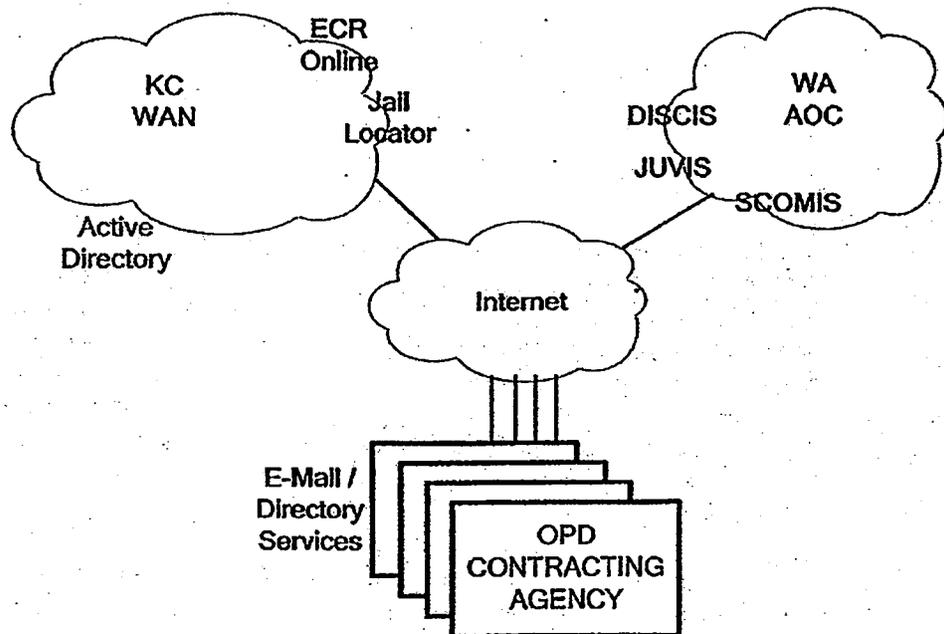
B. Internet-Based Model

Under this alternative, the contracting agencies would access King County and WA AOC applications via the Internet, and each contractor would be responsible for obtaining e-mail services. The contractors would obtain their own Internet connection and would independently establish relationships with the application providers to gain access to county and WA AOC application providers. Many of the capabilities *currently* provided by the county to the contractors are available via the Internet. The notable exceptions are:

- *E-Mail* – While one of the contractors is currently provided with King County e-mail accounts, this contractor would be required to provide its own e-mail services. This is currently being done by three of the four contractors.
- *ECR Online* – Limited access to court records is available over the Internet. These limits would be consistent with the local rules and policies of the King County Superior Court.

Directory entries for contractor staff would be manually synchronized with King County's directory service (Active Directory) on a regular basis. The conceptual architecture of this alternative is summarized in Figure 2. The details of this alternative are presented below.

Figure 2 – Internet-Based Model



1. Applications and Functions Supported

This alternative would provide access to all of the functions and applications currently provided to the contractors. However, there would be some important constraints on the scope of records made available, and some fees would likely apply. The specifics by application are:



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- King County applications:
 - » *Jail Locator* – Access to and functionality of this application would not change.
 - » *ECR* – The intranet version would no longer be accessible to the contractors, and they would use ECR Online. Online access would be restricted to cases initiated after November 2004, and contractors would incur the fees set forth by the King County Superior Court. As noted in subsection II.B, the Superior Court's access and fee policies for ECR Viewer and ECR Online will be re-considered and may be revised in early 2007.
- Washington State applications:
 - » DISCIS would be accessed through JIS-LINK BlueZone.
 - » SCOMIS would be accessed through JIS-LINK BlueZone.
- Active Directory and e-mail:
 - » Contractors currently using King County e-mail would have to provide this service internally. Three of the four contractors already have assumed this responsibility.
 - » Active Directory lists would be shared between the contractors and King County.
- Other applications:
 - » Other applications, such as local CMS and backups, would be considered out of the scope of services to be provided by OPD or King County and would be the responsibility of the contractor.

While this alternative provides access to all the functions and applications currently provided to the contractors, it requires them to provide e-mail applications and pay ECR Online fees. In addition, their access to ECR data would be constrained in compliance with court rules.

2. Network Connectivity

Under this alternative, each contractor would be removed from the KC WAN. The contractor would be responsible for establishing a connection to the Internet through a local Internet Service Provider (ISP). The speed of the connection would be determined by each contractor based on usage, cost, and required performance.

Contractors working within King County facilities in Kent would be logically blocked from the KC WAN and would have all traffic routed to the Internet. Each contractor would be responsible for establishing and maintaining a connection through a chosen ISP.



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Connecting other work locations to the Internet and these applications would be evaluated by each contractor on a case-by-case basis. If it is determined that a location needs to be connected, the contractor would be responsible for establishing an Internet connection.

3. Service Levels

There are no existing service level agreements, and none would be developed under this alternative. The contractors would have greater management control of the network resources that can affect performance of the Web-based applications that would be accessed.

4. Licensing and Hardware

This alternative would require several licensing and hardware changes. Additional hardware, software, and licenses may be required by some contractors if they choose to provide local e-mail to their users.² Network hardware and connections to the primary contractor locations could be eliminated. Some network hardware at King County facilities may be removed if it is exclusively used by the contractors. Table 2 summarizes these changes.

Table 2 – License and Hardware Changes for the Internet-Based Model

Agency	Hardware	Software Licenses
ACA	<ul style="list-style-type: none"> • E-mail server. • Directory server. • Router/firewall. 	<ul style="list-style-type: none"> • E-mail server and client licenses. • Directory server license.
NDA	No change.	No change.
SCRAP	No change.	No change.
TDA	No change.	No change.
King County	Contractor network connections (remove).	No change.

5. Organizational Model

This alternative involves changes in the organizations providing network and application support to the contractors. The biggest changes would involve the KC WAN and application support.

- KC WAN support would be limited to external Internet access zones. Physical connections to non-King County facilities would be eliminated. County application

² E-mail services could be provided through an Application Service Provider (ASP).



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support has implicitly included support and troubleshooting for the KC WAN. This would no longer be required. Network security support requirements (e.g., password reset) would be resolved since direct connections from the contractors would be removed.

- Since ECR Online would be used to access court records, support requirements would shift from ECR Viewer.
- E-mail support for ACA would shift from King County to the contractor. All contractors will provide their own e-mail support.

For many of the applications, the organizations providing support would stay the same.

- Since Jail Locator is currently accessed through the Internet, support for this application would remain unchanged.
- LAN and desktop support would continue to be provided within each contractor. The level of support would be determined by the business requirements of the contractor.
- WA AOC applications are currently accessed through the Internet. Support for these applications would remain unchanged.

Under this alternative, all contractors would be required to maintain the organizational capacity to establish, troubleshoot, and generally support an Internet connection, e-mail, and synchronization of e-mail directories with King County. The county would no longer be called on to provide KC WAN support to the contractors but would be required to work with each of them to regularly synchronize directory listings.

6. Key Policies

This alternative complies with King County policies and intentions to move the contractors off the KC WAN. In addition, it is consistent with court rules concerning electronic access to court records.

7. Financial Impacts

The financial impacts of this alternative are presented in APPENDIX B. It identifies the onetime and ongoing costs of this alternative for each of the stakeholder agencies in this study.³ It also provides a listing of the unit price and volume assumptions that underpin the analysis. The major financial factors include:

³ To simplify the table, OPD and King County OIRM are combined.



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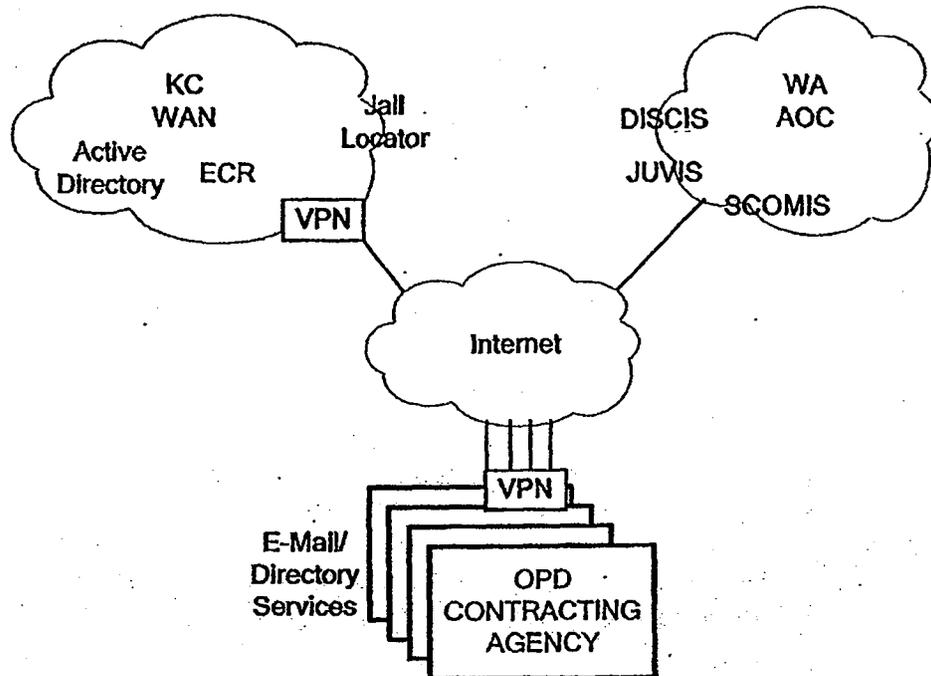
- *Transitioning E-Mail and Directory Services* – All the contractor agencies have these services today, except ACA. Under this alternative, ACA would contract for e-mail and directory services through an ISP (also contracted as discussed below).
- *Application User Fees* – Under this alternative, the contractors would use ECR Online and incur user fees at the current prevailing rate. While under the current cost model this charge is assigned a 75 percent likelihood, under this alternative it is assigned a 100 percent likelihood.
- *Network Connection* – This includes costs to decommission existing connections to the KC WAN and ongoing ISP service for ACA.
- *Organization (Support)* – The following changes would be made in support:
 - » *IT Support* – King County IT would no longer provide network support, saving an estimated 0.25 FTEs.
 - » *ECR Support* – ECR support workload in assistance to OPD contractors would transition from ECR Viewer to ECR Online support.
 - » *E-Mail Support* – MTG has estimated that e-mail support has required about 0.13 FTEs. This cost would be avoided.
 - » *Synchronization of Directories* – Synchronization between King County and the agencies is estimated to require approximately 4 hours per month.

This analysis compares the current cost model and shows that over a 5-year period, there is a significant cost to the agencies for ECR if the current cost recovery structure of the Superior Court remains in place. Beyond that, the agencies incur additional costs for maintaining network, e-mail, and directory services. King County realizes savings in support costs. In addition, the County avoids the financial impacts (not estimated) of security breaches and incidents such as viral attacks inadvertently introduced by one of the agencies.

C. Virtual Private Network-Based Model

The Virtual Private Network (VPN) -Based Model eliminates direct access to King County applications. VPN is a private communications network set up between networks to communicate confidentially over a non-private network. A tunnel is created directly between networks utilizing the internet protocol in most cases. KC WAN connections to each contracting agency would no longer be needed. Access to the ECR Viewer application would be provided by a VPN, which would require authentication and be restricted to the ECR Viewer application. Miscellaneous network traffic would be eliminated. Access to other required applications would be provided through an Internet connection established by the contractor.

Figure 3 – VPN-Based Model



1. Applications and Functions Supported

This alternative would provide access to all of the functions and applications currently provided to the contractors. The specifics by application are:

- King County applications:
 - » *Jail Locator* – Access to and functionality of this application would not change.
 - » *ECR Viewer* – The intranet version of ECR would continue to be accessible to the contractors. Users would authenticate access to the KC WAN using VPN client software. Once a connection is established, the user would have access to the internal version of the application.⁴

⁴ It is important to note that the King County Superior Court will review internal access to ECR in the first quarter of 2007. While the Superior Court has historically allowed materially full and free access to ECR to anyone on the KC WAN, it is considering whether to significantly limit that internal access. It may require compliance with court rule whether access is via the Internet or the KC WAN.



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- Washington State applications:
 - » DISCIS would be accessed through JIS-LINK BlueZone.
 - » SCOMIS would be accessed through JIS-LINK BlueZone.
- Active Directory and e-mail:
 - » Contractors currently using King County e-mail would have to provide this service internally. Three of the four contractors already have assumed this responsibility.
 - » Active Directory lists would be shared between the contractors and King County.
- Other applications:
 - » Other applications such as local CMS and backups, would be considered out of the scope of services to be provided by OPD or King County and would be the responsibility of the contractor.

While this alternative provides access to all the functions and applications currently provided to the contractors, it requires them to provide e-mail applications.

2. Network Connectivity

Under this alternative, each contractor would be removed from the KC WAN. The contractors would be responsible for establishing a connection to the Internet through a local ISP. The speed of the connection would be determined by each contractor based on usage, cost, and required performance. The agencies would not have a noticeable difference in speed and performance between their current connection and a VPN connection.

King County would create a VPN access point into the KC WAN. A VPN server would provide authentication into the network and constrain traffic from the contractors to the ECR Viewer application on the KC WAN. The contractors would also establish VPN client facilities and software.

Contractors working in Kent at the Meeker building would be logically blocked from the KC WAN and would have all traffic routed to the Internet. Each contractor would be responsible for establishing and maintaining a connection through a chosen ISP. In addition, there is an attorney room at Division of Youth Services (DYS) that will need to have changes made to the computer, either to provide public internet access (outside of the KC WAN) or the attorneys would no longer have access while at DHS.

Connecting other work locations to the Internet and these applications would be evaluated by each contractor on a case-by-case basis. If it is determined that a location needs to be connected, the contractor would be responsible for establishing an Internet connection.



3. Service Levels

There are no existing service level agreements, and none would be developed under this alternative. The contractors would have greater management control of the network resources that can affect performance of the Web-based applications that would be accessed.

4. Licensing and Hardware

This alternative would require several licensing and hardware changes. Additional hardware, software, and licenses may be required by some contractors if they choose to provide local e-mail to their users⁵. Network hardware and connections to the primary contractor locations could be eliminated. Some network hardware at King County facilities may be removed if it is exclusively used by the contractors. Table 3 summarizes these changes.

Table 3 – License and Hardware Changes for the VPN-Based Model

Agency	Hardware	Software Licenses
ACA	<ul style="list-style-type: none"> • E-mail server. • Directory server. • Router/firewall. 	<ul style="list-style-type: none"> • E-mail server and client licenses. • Directory server license. • VPN client license.
NDA	No change.	VPN client license.
SCRAP	No change.	VPN client license.
TDA	No change.	VPN client license.
King County	<ul style="list-style-type: none"> • Contractor network connections (remove). • VPN server 	VPN server license.

5. Organizational Model

This alternative involves changes in the organizations providing network and application support to the contractors. The biggest changes would involve the KC WAN and application support.

- King County network support would need to be continued in support of the VPN and ECR Viewer.
- King County will need to regularly assess the compliance of the contractors' use of the KC WAN, VPN, and ECR Viewer.

⁵ E-mail services could be provided through an ASP.



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- E-mail support for ACA would shift from King County to the contractor. All contractors would provide their own e-mail support.

For many of the applications, the organizations providing support would stay the same.

- Since Jail Locator is currently accessed through the Internet, support for this application would remain unchanged.
- LAN and desktop support would continue to be provided within each contractor. The level of support would be determined by the business requirements of the contractor.
- WA AOC applications are currently accessed through the Internet. Support for these applications would remain unchanged.

Under this alternative, all contractors would be required to maintain the organizational capacity to establish, troubleshoot, and generally support an Internet connection, e-mail, and synchronization of e-mail directories with King County. The county would continue to support the KC WAN, specifically as it relates to the use of the VPN. It would be required to work with each contractor to regularly synchronize directory listings.

6. Key Policies

This alternative literally complies with King County policies and intentions to move the contractors off the KC WAN. However, the VPN would provide access to an application that is available only on the KC WAN (namely, ECR Viewer). In addition, this alternative is not consistent with court rules concerning electronic access to court records, providing contractors free access to ECR documents and access to cases prior to November 2004. This is a level of service not provided to other (private) defense counsel.

7. Financial Impacts

The financial impacts of this alternative are presented in APPENDIX B. As with the previous alternative, it identifies the onetime and ongoing costs for each of the stakeholder agencies in this study. It also provides a listing of the unit price and volume assumptions that underpin the analysis. The major financial factors include:

- *Transitioning E-Mail and Directory Services* – All the contractor agencies have these services today, except ACA. Under this alternative, ACA would contract for e-mail and directory services bundled with the ISP services noted below.
- *VPN* – This alternative requires the use of a VPN. This includes a VPN device at King County and VPN software on each OPD contractor agency PC.
- *Application User Fees* – Under this alternative, the contractors would use ECR Viewer through the KC WAN. While that is currently free of charge, it is likely (75



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percent chance) that the Superior Court will begin charging for this service. It is assumed that agencies would incur user fees at the current prevailing rate.

- *Network Connection* – This includes costs to decommission existing connections to the KC WAN and ongoing ISP service for ACA.
- *Organization (Support)* – The following changes would be made in support:
 - » *IT Support – King County IT:*
 - Would no longer provide network support, saving an estimated 0.25 FTEs.
 - Would be required to provide VPN support, adding an estimated 0.13 FTEs.
 - » *VPN Support* – VPN support for the agencies would involve about 30 minutes of IT support to set up each PC and about half that effort on an annual basis for ongoing support.
 - » *E-Mail Support* – MTG has estimated that e-mail support has required about 0.13 FTEs. This cost would be avoided.
 - » *Synchronization of Directories* – Synchronization between King County and the agencies is estimated to require approximately 4 hours per month.

This analysis compares the current cost model and shows that over a 5-year period, there is a significant cost to the agencies for ECR if the current cost recovery structure of the Superior Court remains in place. The agencies incur additional costs for maintaining network, e-mail, and directory services. King County realizes some savings in support costs. Beyond that, the setup and maintenance of the VPN would cost the community approximately \$200,000 over 5 years. In addition, the County remains subject to the financial impacts (not estimated) of security breaches and incidents such as viral attacks inadvertently introduced by one of the agencies.

IV. Alternatives Analysis



IV. Alternatives Analysis

This section presents our alternatives analysis. The three alternatives are summarized side by side in Table 4. This table summarizes each of the alternatives in terms of:

- Applications provided.
- Network services.
- Changes in service levels.
- Licensing and hardware changes.
- Changes in organization responsibilities.
- Policy support.
- Financial impact.

As shown in Table 4, Alternative 1 does not meet the objective of transitioning off the network. However, it does provide a benchmark for assessing the other alternatives. The key aspect of this alternative is that even if the agencies are not transitioned off the KC WAN, access to ECR may be limited to cases filed after November 2004 and fees may be charged for accessing these records.

Table 4 – Summary of Alternatives Analysis

	Alternative 1 – Current	Alternative 2 – Web	Alternative 3 – VPN	Notes
Application				
JIS-LINK	Yes, KC WAN.	Yes, Internet.	Yes, Internet.	
Jail Locator	Yes, KC WAN.	Yes, Internet.	Yes, Internet.	
ECR	Yes, KC WAN, ECR Viewer.	Yes, Internet, ECR Online.	Yes, KC WAN, ECR Viewer.	Access and fees will change for Alternative 2. They may change for other alternatives.
MCIS	Yes, KC WAN.	Yes, Internet.	Yes, Internet.	
Network Connectivity				
King County Router	Yes.	No.	Yes with VPN.	
Internet Connectivity	King County and agency.	Agency.	Agency.	
Payment for Connection	King County directly.	King County through agency.	King County through agency.	



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	Alternative 1 – Current	Alternative 2 – Web	Alternative 3 – VPN	Notes
Service Level				
Service Level Agreements	None.	None.	None.	No change.
Performance Monitoring	None.	None.	None.	No change.
King County Support	Limited.	Limited.	Limited.	No change.
Agency Support	✓	✓	✓	Agencies would take greater responsibility.
Licensing				
ECR Viewer	None.	None.	None.	
ECR Online	None.	None.	None.	
Jail Locator	None.	None.	None.	
JIS-LINK	User agreement.	User agreement.	User agreement.	
E-Mail	Licensed by some agencies and King County.	Licensed each agency or ISP.	Licensed each agency or ISP.	
Directory Services	Licensed by some agencies and King County.	Licensed each agency or ISP.	Licensed each agency or ISP.	
Support Organization				
Wide Area Network	King County.	None.	None.	
VPN	None.	None.	King County.	
ECR Viewer	King County.	None.	King County.	
ECR Online	None.	King County.	None.	
E-Mail	King County.	None.	None.	
Directory Synchronization	None.	King County, contractors.	King County, contractors.	
Policy Support				
Removal From KC WAN	Does not support.	Supports.	Makes VPN exception for ECR.	
Court Record Access Rules	Does not support.	Supports.	Does not support.	
Court Fees	Does not support.	Supports.	Does not support.	



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	Alternative 1 – Current	Alternative 2– Web	Alternative 3 – VPN	Notes
OPD/King County	\$ 0	\$ (153,500)	\$ (13,500)	
ACA	254,531	399,375	331,580	
NDA	171,045	258,060	207,319	
SCRAP	288,225	414,300	331,221	
TDA	293,355	421,140	344,118	
Net Cost	\$1,007,158	\$1,339,375	\$1,200,718	

Alternative 2 moves the contract agencies off the KC WAN and employs Web-based applications via the Internet to provide access to most of the records that the agencies' staff use. The only significant difference from the current environment is that access to ECR will be limited to cases filed after November 2004 and fees will be charged for accessing these records. These fees will be sent to the King County Superior Court and placed in the current expense allocation.

Under this alternative, all the contractor agencies maintain Internet connectivity and arrange for their own e-mail. Directories will be coordinated between the agencies and the county. There are no changes in service levels, licenses, or hardware. King County will no longer be required to network or e-mail resources for the contractor agencies. Demand from the agencies for ECR support from the Superior Court will transition from ECR Viewer support to ECR Online support. King County and the contractor agencies will be called on to provide resources to synchronize e-mail directories.

Based on current rates and policies, there would be a significant transfer of funds from the OPD through the contracting agencies to the King County Superior Court. Beyond that, the agencies will experience a \$6,000 to \$11,000 increase in annual IT cost over current operations. The county could realize over \$30,000 in annual savings. Across the whole community of stakeholders, the change in costs over 5 years is nominal.

Also shown in Table 4, Alternative 3 physically moves the contract agencies off the KC WAN. However, this alternative provides VPN access to the KC WAN exclusively for access to the ECR Viewer. It employs Web-based applications via the Internet to provide access to all other applications currently used by the OPD contractors. It is important to note that even if the agencies still have access to ECR Viewer via VPN through the KC WAN, access to any ECR application may be limited to cases filed after November 2004 and fees may be charged for accessing these records.

Under this alternative, all the contractor agencies maintain Internet connectivity and arrange for their own e-mail. Directories will be coordinated between the agencies and the county. There are no changes in service levels. King County will need to install VPN hardware, and



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agencies will need to license VPN software to securely access the KC WAN. King County will no longer be required to network or e-mail resources for the contractor agencies but will be required to support the VPN. King County and the contractor agencies will be called on to provide resources to synchronize e-mail directories.

Based on current rates and policies, this alternative would also result in a significant transfer of funds from the OPD through the contracting agencies to the King County Superior Court. Beyond that, the agencies will experience material onetime and ongoing costs to establish and maintain the VPN and synchronize e-mail directories. The county could realize nominal annual savings. Across the whole community of stakeholders, the increase in costs over 5 years is approximately \$1,200,000.



V. Findings/Recommendations



V. Findings/Recommendations

This section presents our findings and recommendations. There are few major findings in this study. They surround access to ECR information and cost sharing for the IT resources used by the OPD contractor agencies. Three basic recommendations are provided to meet the objectives of this study and improve the current operations.

A. Major Findings

Major findings from the study include the following:

- Two agencies, TDA and SCRAP, which have selected internal IT resources, are better situated for a transition off the KC WAN. These agencies have hired dedicated full time IT personnel, software and hardware to conduct business without the assistance from King County. NDA has started preparations by acquiring contract an IT resource for server, network and acquiring hardware. In contrast, ACA has decided to employ other staff (an IT savvy senior legal professional) to provide IT support. However, the scope and sophistication of IT support required by the agencies is surpassing the point where it makes economic sense to employ senior legal counsel to provide these services.
- Constraints on the access to ECR information are based on policies meant to protect confidential data of litigants. The court has constrained ECR Online access to cases filed after November 2004 in an effort to protect confidential litigant information that is maintained in ECR for cases prior to that date. This is an automated manifestation of local court rules.
- OPD contractors have been given broader and cheaper access to ECR than what is provided to other defense counsel through a loophole in court and county rules and operations. The court has not constrained access or charged fees to county agents using ECR. This has included OPD contractors.
- The court is planning to revisit its policies, rules, and fees for ECR in early 2007. This will likely:
 - » Close the loophole for OPD contractors. The court is still considering this action.
 - » Revise the fee structure, possibly downward.
- OPD contractors have historically been provided IT resources through varying combinations of in-kind provisions and expense allotments. It is not clear what IT resources are covered in the IT expense allotment and what should be directly provided.
- The information and services needed by the OPD contractors are available via the internet. The records and information required by OPD contractor agencies are



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generally public information. As such, the organizations providing the information have created Internet applications to provide this information.

B. Recommendations

We have developed a basic course of action for OPD, given the findings above and the objectives for moving the agencies off the KC WAN. This approach attempts to maximize the benefits to OPD and the agencies while minimizing costs.

- *Maintain the Status Quo Initially* – OPD should maintain the status quo as the court revisits its ECR policies, rules, and fees. This will maximize the benefits to OPD and the contractors.
- *IT Support for Each Contracting Agency* – OPD should enforce a policy for each agency to have an FTE solely dedicated to IT within the agency. This IT FTE will be included in the cost of operations for each agency.
- *Open a Dialog With Superior Court on OPD Use of and Cost Recovery for ECR* – OPD should contact the management of ECR and discuss the access needs of the contract agencies. The two organizations should also discuss how to effect the appropriate cost-sharing arrangements.
- *Prepare to Implement Alternative 2* – OPD should work with the contractors to set expectations, prepare to transition responsibilities, and set IT budgets and reimbursements for OPD contractor IT resources.

Once the court has set policy and fee structure for ECR, OPD should implement Alternative 2. It should transition ACA to support its own Internet access, access to internet based applications (MCIS, JIS, ECR, etc.) e-mail, and directory services. It should work with King County IT and the agencies to decommission the current KC WAN connection and arrange a protocol to synchronize e-mail directories.



**Appendix A
Interviewees**



Appendix A – Interviewees

Name	Representing
Mr. Jim Robinson	ACA
Ms. Terry Howard	NDA
Mr. Sam Smit	NDA
Mr. Loring Cox	SCRAP
Ms. Anne Daly	SCRAP
Mr. Nathan Sandver	TDA
Mr. Preman Bajra	TDA
Mr. Arnold Prado	TDA
Ms. Teri Bednarski	King County Department of <i>Community and Human Services, Mental Health, Chemical Abuse and Dependency Division (DCHS MHCADSD) IT</i>
Mr. Mike Stewart	King County Department of <i>Community and Human Services, Mental Health, Chemical Abuse and Dependency Division (DCHS MHCADSD) IT</i>
Mr. Roger Winters	ECR
Ms. Teresa Bailey	ECR
Mr. Roger Kaiser	King County OIRM
Ms. Martine Kaiser	OPD

Appendix B
Financial Impacts of Each Alternative



Appendix B – Financial Impacts of Each Alternative

The following pages present the financial impacts for each alternative considered in the analysis.

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FINANCIAL IMPACTS OF ALTERNATIVE 1

	King County		ACA		NDA		SCRAP		TDA	
	Onetime	Annual	Onetime	Annual	Onetime	Annual	Onetime	Annual	Onetime	Annual
Application Acquisition License Fee										
E-Mail	-	-	-	-	-	-	-	-	-	-
Directory Server										
Application Use Fees										
ECR Online Fees Paid	-	-	\$ 50,908	-	\$ 34,209	-	\$ 57,845	-	\$ 58,671	-
Network Connection										
Internet Service (Annualized, With E-Mail)	-	-	-	-	-	-	-	-	-	-
Hardware										
Router/Firewall	-	-	-	-	-	-	-	-	-	-
E-Mail/Directory Server	-	-	-	-	-	-	-	-	-	-
Organization										
Network Support	-	-	-	-	-	-	-	-	-	-
ECR Support	-	-	-	-	-	-	-	-	-	-
ECR Online	-	-	-	-	-	-	-	-	-	-
E-Mail	-	-	-	-	-	-	-	-	-	-
Directory Service Synchronization	-	-	-	-	-	-	-	-	-	-
5-Year Cost	\$ -	\$ -	\$ 50,908	\$ -	\$ 34,209	\$ -	\$ 57,845	\$ -	\$ 58,671	\$ -
Total by Organization	\$ -	\$ -	\$ 254,531	\$ -	\$ 171,045	\$ -	\$ 288,225	\$ -	\$ 293,355	\$ -
Net 5-Year Cost Across All Organizations	\$ -	\$ -	\$ 254,531	\$ -	\$ 171,045	\$ -	\$ 288,225	\$ -	\$ 293,355	\$ -
Notes/Assumptions										
King County IT FTE Cost Estimated	\$100,000									
Contract IT Resource Cost per Hour	\$125									
Hours per Month Spent on Directory Synchronization	\$4									
Agency IT Administration FTE	\$100,000									
Cost per Page for ECR Online	\$ 0.09									
Court Record Request Pages/Case Credit	100									
Case Credits - ACA	7542									
Case Credits - NDA	5068									
Case Credits - SCRAP	8540									
Case Credits - TDA	8682									
Likelihood of Fees for ECR Viewer	76%									



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KING COUNTY OFFICE OF THE PUBLIC DEFENDER
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FINANCIAL IMPACTS OF ALTERNATIVE 2

	King County		ACA		MDA		SCRAP		TDA	
	Onetime	Annual	Onetime	Annual	Onetime	Annual	Onetime	Annual	Onetime	Annual
Application Acquisition License Fee										
E-Mail	-	-	-	\$ 800	-	-	-	-	-	-
Directory Server	-	-	-	800	-	-	-	-	-	-
Application Use Fees										
ECR Online Fees Paid	-	-	-	67,875	-	\$ 45,612	-	\$ 76,880	-	\$ 78,228
Network Connection										
Internet Service (Annualized, With E-Mail)	\$ 4,000			4,800						
Hardware										
Router/Firewall	-	-	-	-	-	-	-	-	-	-
E-Mail/Directory Server	-	-	-	-	-	-	-	-	-	-
Organization										
Network Support	-	(25,000)	-	-	-	-	-	-	-	-
ECR Support	-	-	-	-	-	-	-	-	-	-
ECR Online	-	-	-	-	-	-	-	-	-	-
E-Mail	-	(12,500)	-	-	-	-	-	-	-	-
Directory Service Synchronization	-	6,000	-	6,000	-	6,000	-	6,000	-	6,000
5-Year Cost	\$ 4,000	\$ (31,500)	-	\$ 79,675	-	\$ 51,612	-	\$ 82,880	-	\$ 84,228
Total by Organization	\$ 4,000	\$ (157,500)	-	\$ 398,375	-	\$ 258,060	-	\$ 414,300	-	\$ 421,140
Net 5-Year Cost Across All Organizations		\$ (183,500)		\$ 398,375		\$ 258,060		\$ 414,300		\$ 1,339,375
Notes/Assumptions										
King County IT FTE Cost Estimated	\$100,000									
Contract IT Resource Cost Per Hour	125									
Hours per Month Spent on Directory Synchronization	4									
Agency IT Administration FTE	100,000									
Cost per Page for ECR Online	\$ 0.09									
Court Record Request Pages/Case Credit	100									
Case Credits - ACA	7542									
Case Credits - NDA	5068									
Case Credits - SCRAP	8540									
Case Credits - TDA	9892									



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FINANCIAL IMPACTS OF ALTERNATIVE 3

	King County		ACA		NDA		SCRAP		TDA	
	Onetime	Annual	Onetime	Annual	Onetime	Annual	Onetime	Annual	Onetime	Annual
Application Acquisition License Fee										
E-Mail	-	-	-	\$ 600	-	-	-	-	-	-
Directory Server	-	-	-	600	-	-	-	-	-	-
VPN	\$ 5,000	\$ 1,000	\$ 2,280	456	\$ 840	\$ 168	\$ 1,740	\$ 348	\$ 2,780	\$ 556
Application Use Fees										
ECR Online Fees Paid	-	-	-	50,806	-	34,208	-	57,845	-	58,671
Network Connection										
Internet Service (Annualized, With E-Mail)	4,000	-	-	4,800	-	-	-	-	-	-
Hardware										
Router/Firewall	-	-	-	-	-	-	-	-	-	-
E-Mail/Directory Server	-	-	-	-	-	-	-	-	-	-
VPN Server	5,000	-	-	-	-	-	-	-	-	-
Organization										
Network Support	-	(25,000)	-	-	-	-	-	-	-	-
VPN Support	-	25,000	3,563	1,781	1,313	658	2,719	1,358	4,344	2,172
ECR Support	-	-	-	-	-	-	-	-	-	-
ECR Online	-	-	-	-	-	-	-	-	-	-
E-Mail	-	(12,500)	-	-	-	-	-	-	-	-
Directory Service Synchronization	-	6,000	-	6,000	-	6,000	-	6,000	-	6,000
5-Year Cost	\$ 14,000	\$ (6,500)	\$ 6,843	\$ 65,144	\$ 2,163	\$ 41,033	\$ 4,459	\$ 65,352	\$ 7,124	\$ 67,368
Total by Organization	\$ 14,000	\$ (27,500)	\$ 5,843	\$ 325,718	\$ 2,163	\$ 205,168	\$ 4,459	\$ 326,782	\$ 7,124	\$ 336,984
Net 5-Year Cost Across All Organizations		\$ (13,500)		\$ 331,580		\$ 207,319		\$ 331,221		\$ 1,200,718
Notes/Assumptions										
King County IT FTE Cost Estimated	\$100,000									
Contract IT Resource Cost per Hour	125									
Hours per Month Spent on Directory Sync	4									
Agency IT Administration FTE	100,000									
Cost per Page for ECR Online	\$ 0.09									
Court Record Request Pages/Case Credit	100									
Attorneys Case Credits										
ACA	114	7542								
NDA	42	5088								
SCRAP	87	8540								
TDA	139	8682								
Likelihood of Fees for ECR Viewer	70%									
VPN Client Cost	\$20									



Calculation of Indirect Overhead Rate

1. 2007 Actual expenditures for eligible categories

	Total
OFFICE OPERATIONS	
EMPY REL	26,137.88
TELE-Long Dist	21,428.15
TELE-LOCAL	92,553.52
GEN SUPP	180,055.14
REPR&MAINT	38,668.49
COMP SUPP	44,269.66
POSTAGE	41,206.83
PHOTO COPY	22,806.09
PRINTING	15,824.82
SUBSCRIP	52,811.45
UTILITIES	31,750.34
GARBAGE	917.89
JANITORIAL	30,579.84
Storage	80,126.13
MISC	29,989.03
MESSENGER	12,977.14
SERV CHGS	29,674.59
EQMT RENTAL	8,008.87
MINOR EQ	75,221.43
ADVERTISING	4,699.97
ELECTRONIC RESEARCH	23,328.00
TOTAL OFFICE	863,035
CAPITAL EXPENDITURE	
PURCHASE	90,625.51
EQMT LEASE	184,741.69
LEASE IMPROV	43,014.36
PROP TAX EXP	-
OPERATING EXP	-
TOTAL CAPITAL	318,382
OTHER	
BOARD EXP	2,074.94
PROF SVC-LEG	32,138.59
PROF SVC-ACTG	30,438.45
	36,829.21
PROF SVC- OTHER	95,288.96
VOL SERVICES	6,050.00
RECRUITING	5,279.50
BUSI TAXES	610.78
BUSI LICENSES	373.36
TOTAL OTHER	209,084
Total 2007 Indirect Overhead	1,390,501

2. Total 2007 direct expenditures

25,990,059

3. Indirect Overhead rate

53.5%

Calculation of Admin Overhead Rate

2009 Model	2007 Salaries	2007 FICA	2007 Benefits	
Grand total administration expenditures for 2003	1,898,445	131,221	206,376	2,236,042
Total Direct Expenditures - all agencies				25,990,059
Total Legal and Non-legal Salaries			21,037,559	
Total Benefits			4,236,728	
Total Direct Overhead Cost			715,772	
Percent of Adm to Total Direct Expenditures				8.60%

2008 Model	2003 Salaries	2003 FICA	2003 Benefits	
Grand total administration expenditures for 2003	1,580,203.78	120,885.59	161,886.85	1,862,976
Total Direct Expenditures - all agencies				23,035,628
Total Legal and Non-legal Salaries			18,774,862	
Total Benefits			3,545,213	
Total Direct Overhead Cost			715,552	
Percent of Adm to Total Direct Expenditures				8.09%

Model Benefits Based on 2007 Actual Contractor Costs
 1. Benefits in Funding Model based on 2007 costs (as reported by agencies)

County Benefit Inflation Rate	4.500%		5.900%	
	2007 per	2008 per	2008 per	2009 per
	FTE rate	FTE rate	FTE rate	FTE rate
Retirement	731.93	764.87	45.13	809.99
Medical Insurance	5,725.06	5,982.69	352.98	5,335.67
Dental Insurance	719.87	752.26	44.38	796.64
Vision Insurance	68.34	71.42	4.21	75.63
Disability Insurance	463.99	484.87	28.61	513.48
Life Insurance	56.20	58.73	3.46	62.19
AD&D Insurance	14.11	14.74	0.87	15.61
Employee Assistance Prog	7.43	7.77	0.46	8.23
	7,786.93	8,137.34	480.10	8,617.44

2. Benefits in Funding Model based on 2003 costs (as reported by agencies)

County Benefit Inflation Rate	19.185%		-1.682%		5.0310%		10.930%		5.900%				
	2003 per	2004 per	2004 per	2005	2005 per	2006	2006 per	2007	2007 per	2008	2008 per	2009	2009 per
	FTE rate												
Retirement	823.93	158.07	982.00	(16.32)	965.48	48.56	1,014.04	110.83	1,124.87	50.62	1,175.49	69.35	1,244.85
Medical Insurance	3,870.24	742.50	4,612.74	(77.61)	4,535.13	228.12	4,768.25	520.62	5,288.87	237.77	5,821.65	325.78	5,847.42
Dental Insurance	670.27	128.59	798.86	(13.44)	785.42	39.51	824.93	90.16	915.10	41.18	956.28	56.42	1,012.70
Vision Insurance	50.73	9.73	60.47	(1.02)	58.45	2.99	62.44	6.82	68.26	3.12	72.38	4.27	76.65
Disability Insurance	450.29	86.39	536.67	(9.03)	527.64	26.54	554.18	60.57	614.76	27.66	642.42	37.90	680.32
Life Insurance	47.39	9.13	56.72	(0.95)	55.77	2.81	58.57	6.40	64.87	2.92	67.90	4.01	71.90
AD&D Insurance	1.18	0.23	1.41	(0.02)	1.38	0.07	1.45	0.16	1.61	0.07	1.68	0.10	1.78
Employee Assistance Prog	81.09	15.56	95.65	(1.63)	95.02	4.78	99.80	10.91	110.71	4.98	115.69	6.83	122.51
TOTAL PER FTE	5,993.32	1,150.19	7,145.51	(120.33)	7,025.29	353.37	7,378.66	806.49	8,185.15	368.33	8,533.48	504.66	9,058.14

Public Defense Proviso Workgroup

V. David Hocraffer	OPD	david.hocraffer@kingcounty.gov
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Lisa Daugaard	TDA	lisa.daugaard@defender.org

Definitions (Revised)

For discussion purposes, these terms are defined as follows:

"Funding Model" or "Model" (quoting Motion 12160)

The "formula which is used to develop funding levels for public defense contracts." This formula is set forth in Attachment A of Motion 12160

"Updates to the Model"

Changes to the values of the Model (formula) components, which vary over time. These updates are required by Attachment A of Motion 12160.

"Changes to the Model"

Changes to the formula or components of the formula which is used to develop funding levels for public defense contracts. These changes must be approved by Council.

"Changes to the Contract"

Changes to language in the Contract, which affect practice and/or money payments to agencies, but do not affect the Model.

"Boilerplate"

General Contract language which constitutes the body of the Contract. "Boilerplate" does not include exhibits or attachments

Public Defense Proviso Workgroup - Issues for Discussion List

(Updated 1/6/09)

- Professional staff salary review (social worker, investigator, paralegal)
- Partial funding of FTEs
- Attorney salary levels beyond the current public defender scale (addition of Senior IV level attorney scale)
- Clerical staffing levels
- Follow up on information from 12/23 meeting
- Expedited calendar
- July 1. expected electronic filing changes
- Attrition rate formula
- Components of salary parity
- Case weighting of general felony caseload (longer term workgroup, and short term "interim" options)
- Aggravated/complex reimbursement levels
- Benefits calculation
- Deferred revenue
- Process for reviewing issues that impact work and funding mid-contract
- IT/County network issues
- Contract "variance"
- Rent

Other

- 593 Funding
 - Discussion regarding philosophy for reimbursement change – as time permits
- Washington State Bar Association Standards and Impact on King County (staffing ratios, caseload standards for 593 and SVP, counting of cases, dependency funding and other issues) – ongoing discussion needed
- Dependency caseload/case counting mechanisms, in light of potential state dependency parents funding (longer term workgroup discussion, can be connected to "WSBA Standards and Impact on King County" longer term discussion)



King County

Public Defense Proviso Meeting

Thursday, December 18, 2008 @ 1:30 p.m.

**Conference Room 4A
Chinook Building**

AGENDA

- 1. Introductions**
- 2. Review proviso assignment**
- 3. Definition of terms**
- 4. Review model components and brainstorm additional components for discussion**
- 5. Proposed Next Steps/Timeline**

Handouts (provided at meeting):

- **12160 and attachment A**
- **P1 and P2 language**
- **Definition of terms starter list**
- **Cheat sheet of current model components (annual and 3 year update components)**
- **Proposed timeline of activities to complete proviso response**



King County

Public Defense Proviso Meeting

Tuesday, December 23, 2008 @ 9:00 a.m.

**Jackie's Office – 5th floor
Chinook Building**

AGENDA

- 6. Review issues for Discussion List for Omissions/Clarification**
- 7. Professional staff salary review (social workers, investigators, paralegal)**
- 8. Partial funding of FTEs**
- 9. Attorney levels beyond the current public defender scale**
- 10. clerical staffing levels**

Handouts to be provided at the meeting as Krishna is working on pulling them together

**Public Defense Meeting 12/23/08
Chinook Building
Follow up Meeting Notes**

Attendees:

Jim, Don, Jana, Anne (by phone), Eileen, Floris, Lisa, David, Krishna, Mary Jane, Jackie (chair)

Review of 12/22 list of issues:

- Added - deferred revenue
- Added - ongoing conversations on using actuals vs market rate funding in the model
- Deleted funding of attorney calendars (not a KC issue)
- WSB standards discussion moved to 'other' section – as time permits

General follow up:

- Krishna to send Colliers information to Eileen
- OPD to clarify position/funding of rent increase/decrease tied to the 08 amendment

Professional staff salary review (social workers, investigators, paralegals):

- Key question is "Are the comps fair?"
- Problem is no information is available from private firms
- Task assigned to all to think of what might be other sources of comps than those we already use, goal is to build a list to discuss suitability/applicability
- OPS to obtain copy of job description for paralegal and social worker in PAO
- OPD to see if information is available on placement of staff in the salary ranges

Partial Funding of FTEs:

- Krishna to clarify whether 'rounding' is applied individually to agencies as well as to caseload areas
- Krishna to look at possible different scenarios for funding partial positions and run numbers
- Krishna to research the 'partial FTE funding' line in the contracts

Attorney levels beyond the current public defender scale:

- OPD to investigate using actuals, adopted or funded FTE information in development of the model and select a consistent approach
- Lisa to send Krishna earlier version that showed the senior/deputy split with a larger gap – Krishna to investigate rationale for change
- OPD to discuss job descriptions of case/supervisor seniors with PAO
- OPD to obtain senior IV salary range information

Clerical Staffing Levels:

- Actuals from agencies show lower percentages than funded by OPD (reminder that this was part of the rationale for the executive proposing a lower rate in 09)
- Discussion of new system issues that may impact clerical staff including:
 - Increased complexity of felony workload
 - Challenges of electronic discovery
 - New electronic filing processes from the clerks office
 - State standards related to legal assistants and whether or not they apply
- Mary Jane and Anne to review state related issues

Handouts provided by OPD:

- Non legal professional external market survey
- 2007 clerical staffing levels
- Allocating model attorney staffing on Kenny scale based on actual PAO figures
- List of caseload attorneys in PAO provided by NDA
- Methodology for realigning OPD model attorney staffing for parity
- Methodology for realigning OPD model attorney staffing for parity including SRIV
- Updated definitions list
- List of topics for next 3 meetings



King County

Public Defense Proviso Meeting

Monday, December 29, 2008 @ 9:00 a.m.

**4A – 4th floor
Chinook Building**

AGENDA

- 11. Review notes from 12/23 meeting Omissions/Clarification**
- 12. Review assignments from 12/23 meeting that have been completed or are ready for update**
- 13. Expedited Calendar**
- 14. Discussion of July 1 expedited electronic filing changes**

Public Defense Proviso Workgroup Meeting Notes

December 29, 2008

Attendees: David Hocraffer, Marty Lindley, Krishna Duggirala, Anne Daly, Mary Jane Ferguson, Don Madsen, Floris Mikkelsen, Eileen Farley, Jim Robinson, Lisa Daugaard, David Roberson, Jana Heyd, Tesia Forbes, Krista Camenzind

- 1) 12/23/08 meeting notes reviewed
 - A) "Rounding" – rent up (for system)
 - B) Reconciliation
- 2) Cost per case adjustment discussed
- 3) Clarification (rent) in 2008 contract extension
 - A) Concern that COLA, etc. not adjusted
 - B) "Extension" vs. "new" contract
 - C) Believed that "Jackie heard us, and a decision would be made on the issue of rent in the 2008 extension"
 - D) Wants rent trend to high water mark (within same time frame)
- 4) Wanted confirmation of Jackie's position prior to signing extension
- 5) Contractors claim: "as lawyers" interpreting proviso language to not allow caseload related adjustment to cost (e.g. only change number of cases)
- 6) Ron Sims letter also cited (and contractors understanding)
- 7) Discussed definition of terms

--"Caseload adjustments" – model calls for adjustments to cost (administrative/indirect overhead plus rent)

vs.

No cost adjustment, only number of cases at original contract value in January through December 2008 contract

- 8) Professional salary review
 - A) Public defenders: most social workers have MSW or MS—should be requirement
 - B) Majority of public defenders have MS (psych or social worker)
 - C) Questions regarding weighting of social workers
 - D) Investigators—job qualifications
 - E) Compare actual description of public defender offices in King County (for public defender agencies)

- 9) On-going discussion:
- A) Question regarding steps (paraprofessional)
 - B) Retention issues regarding support staff
 - C) Ratios, not specifically addressed for each category
 - D) Possibly break out categories of non-legal support staff by category
 - Investigators
 - Paralegals
 - Social workers
- 10) Contractors: Identify issues regarding “partial FTE’s”, especially for overhead and benefits
- A) Agencies want to round up by each contract and by necessary caseload expenses—initial contract and at reconciliation
 - B) OPD proposal:
 - Adjust at caseload
 - Adjust at contract level between contractors
- 11) Variance
- A) Add to list of issues
 - B) Anne summarizes issue (caseload)
- 12) Clerical staffing levels. Document reviewed showing actual staffing at lower than .25 ratio. Lisa—Public defense agencies use dollars from this area to spend on other things
- 13) Expediteds
- A) Time wise—workload
 - B) Office visits/phone calls
 - C) Insufficient data to base projection at in vs. out of custody
 - D) Issues (per agencies):
 - In custody/jail
 - “not calendar cases”
 - Additional, new charges
 - Read discovery/meet/analyze with defendant
 - Sentencing issues/options
 - Negotiate
 - Possession
 - Collateral consequences
 - E) Don’t see cases taking less than an average of four hours (each individual case)—per Eileen
 - F) Efficiencies:
 - Same type court
 - Attorneys will be paid to be there, regardless if a case is assigned to agency that day
 - G) Issues:
 - Review hearings not built in

- Restitution issues
 - Conflict checks
 - Higher rate of judges imposing probation
 - Discovery not as immediately available
 - Files still have to be opened, etc (staff time)
 - Numbers inadequate to cover all costs of time
 - Only way if all agencies present to ensure cases assigned to agencies
- H) OPD noted that if in-custodies handled intermixed with regular jail calendar (at jail) these are not "calendar" cases

14) E-Filing—updated DJA explanation of procedure for attorneys/agencies



King County

Public Defense Proviso Meeting

Tuesday, December 30, 2008 @ 9:00 a.m.

**4A – 4th Floor
Chinook Building**

AGENDA

- 1. Attrition rate formula**
- 2. Components of salary parity**
- 3. Case weighting of general felony caseload**
- 4. Aggravated/complex reimbursement levels**
- 5. Benefits calculation**
- 6. Deferred revenue**

Additional Items:

- 7. Contract variance**
- 8. 2008 contract extension issues**

Public Defense Proviso Workgroup Meeting Notes

December 30, 2008

Attendees: David Hocraffer, Marty Lindley, Krishna Duggirala, Anne Daly, Mary Jane Ferguson, Don Madsen, Floris Mikkelsen, Eileen Farley, Jim Robinson, Lisa Daugaard, David Roberson, Jana Heyd, Tesia Forbes, Krista Camenzind

- 1) Case weighting—generally felony caseload
 - A) Longer term work group
 - B) Suggestions regarding sex cases
 - Five credits up front (30 case credits)
 - Ability to come back
- 2) Possible use of extra case credits designated, as interim solution short term
- 3) Question regarding if PAO changes back FADS to file most as felonies again after budget crisis ends
- 4) Issue of consensus—agencies were going to meet separately from this group to see if consensus could be reached as to an interim proposal on case weighting
- 5) Attrition rate and salary parity
 - A) Reviewed both documents
 - B) Explained
 - C) Budgeted vs. actual explanation
 - D) Agencies press for “budgeted” personnel
- 6) Budgeted vs. actual
 - A) January of each year
 - B) i.e. after pay reconciliation complete
- 7) Options:
 - A) Do nothing
 - B) Reset—use pay reconciliation—actual budget
 - C) Reset each year
- 8) General agreement by contractors—B) reset—use pay reconciliation—actual budget. Eileen—“only if Senior IV included”
- 9) Benefits—Recommendation by Lisa Daugaard, TDA
 - A) Change from “actual cost” model to setting an “appropriate value for categories
 - B) Reviewed document
 - C) Proposed changes:
 - Assume each agency funded for same benefits and plans
 - e.g. dependency coverage

APPENDIX G

- D) Propose—not use current
- E) Approach benefits for partial FTE's
- F) Change from actual vs. KC stabilized rate

10) Deferred revenue

- A) 1999 SCRAP audit regarding deferred revenue (Dan Lawson)
- B) Agencies claim they are funded to "spend every dime"
- C) Reserve—used as stop gap by agencies (request by Lisa Daugaard)
- D) Agencies wanted the dollars "left with them" to use for on-going expenses



King County

Public Defense Proviso Meeting

Tuesday, January 6, 2008 @ 9:00 a.m.

**4A – 4th Floor
Chinook Building**

AGENDA

- 1. Case weighting of general felony caseload**
- 2. Aggravated/complex reimbursement levels**
- 3. Contract variance**
- 4. Process for reviewing issues that impact work and funding mid-contract**
- 5. IT/County network issues**

Public Defense Proviso Workgroup Meeting Notes

January 6, 2009

Attendees: Jackie MacLean, David Hocraffer, Marty Lindley, Krishna Duggirala, Anne Daly, Mary Jane Ferguson, Don Madsen, Floris Mikkelsen (by phone), Eileen Farley, Jim Robinson, Lisa Daugaard, David Roberson, Jana Heyd, Krista Camenzind

Case weighting

- Mix of cases has fewer simple cases and more complex cases (trend plus PAO filing simpler cases as expedited)
- Agency directors' letter proposes pilot to start now for five month contract with 15 credits (all murders); 10 credits (indeterminate sex cases); 10 credits (cases with mandatory minimum of 20 years).
- In addition, for over 200 hours on these cases, agency would get 3 credits for every additional 50 hours over 200.
- Proposed pilot would also allow for any felony, an additional 3 credits for every 50 hours over the initial 12.1 hours.
- Extraordinary cases would still warrant review by OPD for additional credits. 593 case payments would remain the same with 1 credit for every 12.1 hours of attorney time.
- It is difficult to balance making these changes and getting a contract out in July. More data is needed and we have to recognize that this is a time of large swings in the system.

Expediteds

- OPD calendar funding is acceptable to agencies if calendar attorney is funded at 450 case caseload (same as misdemeanors).
- Expediteds are a "hybrid" type of calendar case requiring follow-up with client, possibly investigation, and advice on sentencing and collateral consequences of a plea. A senior, experienced attorney must do this calendar.
- Agencies need to work on an approach for training felony attorneys now that the easier "beginner" felonies are filed as expediteds and can't be used for training
- More work is needed to sort out the details of how this will be handled.

Aggravated/Complex cases

- Definition of cases could be broader (to include more than aggravated murder cases)
- Compensation level (per credit) same as other felony credits but contract and court rules require highly trained attorneys. Training these attorneys is expensive; compensation for these attorneys is expensive. A higher rate of compensation is warranted.
- But parity with PAO is consistent with current payment method
- If senior IVs are added to salary parity ranges, that would resolve bulk of the issue for agencies

Variance

- OPD site visit audit dings agency for going over caseload, but it going over caseload is within the variance, agency has no funding to meet the caseload cap.

- Agencies are required not to exceed caseload limits.
- Variance is not useful.

Process to adjust for issues occurring mid-contract

- E.g. dependency issue, especially parent vs. child costing of cases
- Clarification is more focus on matters that impact model (in major way) mid-3 year revision time frame, than mid-contract issues
- We should be able to apply a certain amount of reasonableness to addressing system changes

Budget process

- Two year contract?
- Better process?
- Representation to Council of agency position inconsistent with actual position
- Concern regarding agencies receiving different level of information on County budget as OPD or PAO during course of the year
- Concerns regarding Executive Department not being “transparent”
- Political dogfight” each year by agencies?
- Agency concerns regarding area of “inherent under funding”

Timing of contracts

- Change of time schedule preferable (worth trying) per Agency (NDA)
- This is a KCC issue; can’t respond to contractors issues in “normal course”
- Public Defenders—welcomed the suggestions/change of contract timing made by Council
- Change in timing puts OPD out of sync with all other criminal justice agencies’ budget process

IT

- Three issues (per Jackie)
 - System development and how to make more sophisticated
 - How do we improve data
 - Removed from county net
 - Update status
 - “Redo” study
- Current County IT staff seems satisfied with agencies’ IT security (currently) (per ACA), but agencies not county employees; should be off the net per Jackie
- ECR access is major issue and roadblock (clarified financial impact if agencies have to pay to access); ECR access is “policy decision” for DJA/Court and County
- Cost of computers vs. cost of licenses, support
- Desktop replacement every three years, \$1,500 (components in overhead and indirect costs—model)

Rent

- Wanted confirmation regarding methodology of calculation of rent for agencies

APPENDIX G

- 2008 amendments for first five months of 2009 include actuals to rent/space (FTE)—per agencies
- 2% for most contractors—not big impact
- TDA - reiterates pegging rent to a “high water mark” over a long stretch of time
- TDA -- wants caseload volume included in “high water mark”
- Reconciliation issue of what is included in cases in excess of variance
 - Administration/overhead/rent not changed
- As well as contract amendment vs. new contract
- Issues
 - Rent into reconciliation
 - Square feet at high water mark
 - Question regarding being within one mile of courthouse (Seattle)

1/9—Discussion draft of Proviso Report out electronically for review



King County

Public Defense Proviso Meeting

Monday, January 12, 2008 @ 9:00 a.m.

**4A – 4th Floor
Chinook Building**

AGENDA

- 1. Review of Discussion Draft**

Public Defense Proviso Workgroup Meeting Notes
January 12, 2009

Attendees: Jackie MacLean, David Hocraffer, Marty Lindley, Krishna Duggirala, Russ Goedde, Mary Jane Ferguson, Anne Daly, Don Madsen, Floris Mikkelsen, Eileen Farley, Jim Robinson, Lisa Daugaard, David Roberson, Jana Heyd, Krista Camenzind

Rent:

- Review of the draft report and recommendations
- DCHS and OMB will be meeting and finalizing recommendations for the final draft report

Process:

- Contractor comments to report, in addition to the ones currently identified in the draft, were requested by OPD to be forwarded to OPD in an email, or attached as a letter format for each topic for which comment is to be made.

Contractor's Priorities:

- Topics of priority as "top priority":
 - Clerical staffing ratio
 - Expedited felony staffing
 - Attorney salary parity which includes Senior IV and V attorneys
 - Case Weighting
- Other items also important to the contractors, even with the above priority listing

IT section in draft:

- Correction provided for language describing what is available on the web to contractors

Clerical section in draft:

- Contractors want .25 staffing ratio as a *minimum*
- Contractors emphasize anticipated agency clerical workload associated with DJA E-filing requirements
- Decrease from current ratio "would be very hard" for contractors
- Discussion about differing interpretations of WSBA standard 7 requirements, no real consensus on this issue
- Further discussion will occur between OPD and contractors – particularly Mary Jane and Anne, on the WSBA standards issue.
- Contractors reiterate that current average public defense agency actual clerical staffing ratio of .18 clerical per attorney reflects agencies shifting funds from this area to other "underfunded areas";
- Clarification was requested of contractors for clerical staffing levels, on a needs based analysis.
- NDA anticipates needing to scan large amounts of documents as part of E-filing process.

General discussion:

- Discussion of impacts of budget crisis and resultant cuts for various options
- Contractors – one option to handle budget cut would be to just impose a cut at the bottom line, as a “one-time cut”, and not revise model at all
- Contractors – public defense “costs what it costs”, if it has to cost less, then other decisions have to be made in the criminal justice system to reduce volume.
- Contractors – concerns expressed that use of actual business practices and costs was seen as a “deviation from standard and what is has historically been”; and that use of aggregate data from all agencies to achieve a uniform cost means that each agency is impacted by business decisions of other agencies, which may have differing business priorities.
- Contractors noted that the PAO has the ability to make the system changes to save money, unlike public defense, but the PAO took less in cuts for the system changes it identified than public defense
- Methodology used in market surveys (as used in the model, and updated for revisions to the model in support staff salary levels) viewed by contractors as incomplete, as the surveys do not include private firms and thereby reflect “what it costs to keep the staff”.

Expedited felonies:

- Procedural concerns noted with District Court deviating from the original plan for how calendars were to have operated.
- Contractors want to stick with proposal that imposes a 450 per attorney per year cap, incorporated in calendar representation.

Senior IV and V attorney issue:

- Contractors agree with the draft report
- Language and semantic changes noted

Attrition Rate / Salary parity:

- General agreement with section “D” of draft report.

Case Weighting:

- Contractors want “immediate relief” as per their joint letter.
- Concerns that current process is “hit and miss”, in that not all contractors or even attorneys within a given agency, identify or request extraordinary case credit on similar cases that may warrant such requests. Contractors note that not all cases on which extraordinary case credit is requested in given such credits by OPD.
- Contractors identify the anticipated Superior court process changes, likely additional pressure on agency attorneys to complete cases in abbreviated time frames.
- Discussion of types of data to be examined (non-exclusive list):
 - Case types
 - Numbers of cases involved
 - Number of hours per case (for closed cases)
 - Actual extent of load reduction of drug cases / simple felonies

- Contractors noted the Spangenberg Group case weighting study was completed a number of years ago, but acknowledged that study had imperfections.
- Contractors wanted immediate commitment by OPD to a specific case weighting methodology or short-term incorporation of contractor recommendations into current contracts (e.g. grafting onto current extraordinary case credit process). OPD unable to make such detailed commitment at this time; needs to analyze specific data, consider other options, and have further discussion with the Contractors as part of the workgroup referenced in the draft report. OPD existing budget limitations noted as limiting ability to make immediate commitments to a given methodology.

Partial FTE:

- Contractors: the issues is “what we actually get”
- Contractors wanted option “b” in draft.
- Contractors noted issues for administrative and indirect overhead, and rent at time of reconciliation
- Identification of “two way street” aspect of including these cost centers at reconciliation – this would increase funds refunded by agencies at reconciliation where caseloads below contract variance.

Rent:

- Option reviewed and discussed for three year rolling caseload average (e.g. FTE component) being used as part of setting the rate for rent.
- Draft needed clarification of wording of options i. through iii.

Benefits:

- Methodology used generally okay to contractors, as identified in draft.
- Discussion as to the differences and relative potential ramifications between use of “market” vs. “actual” rates as per recommended methodology. Key distinction is that “market” would reset each year; the model would reset every three years, using King County benefits inflation rate for intervening year adjustments.



King County

Office of the Public Defender

Department of
Community and Human Services

Walthew Building, Fourth Floor
123 Third Avenue South
Seattle, WA 98104

206-296-7662 Fax 206-296-0587
TTY Relay 711

December 10, 2008

Andrew Prazuch, Executive Director
King County Bar Association
1200 5th Avenue, Suite 600
Seattle, WA 98101

Dear Mr. Prazuch:

The King County Council passed a 2009 budget for Public Defense that includes a proviso calling for a review of certain proposed modifications of King County Public Defense contracts and the King County Public Defense Payment Model (set forth in King County Motion 12160). As part of that review, the King County Council recognized the value of input from the King County Bar Association (KCBA) as to best practices in criminal defense services. The King County Council requested input from the KCBA, as well as from the public defense contract agencies, in conducting that review. The King County Office of the Public Defender (OPD) has been tasked with working collaboratively with the KCBA and the contract agencies to complete this review, and to provide a report to the King County Council by February 1, 2009.

The timelines involved require that the final draft of the report be provided to the King County Executive by mid-January, 2009, in order that it can be transmitted to the King County Council by the February 1, 2009 deadline.

I am aware that the KCBA has no standing criminal law committee, and that this process may be a difficult one for your organization. I would appreciate an opportunity to discuss with you the KCBA's participation in the process outlined by the King County Council.



Andrew Prazuch
December 10, 2008
Page 2

APPENDIX H

For your reference, a copy of the pertinent portions of the King County Budget Ordinance 2008-0570 is attached. Also attached is a copy of the King County Public Defense Payment Model, King County Motion 12160. The budget ordinance and proviso require the following:

1. Changes the contracting process to move the public defense contract terms from January through December of each year, to July through June of the following year. The first such contract would start July 2009. This necessitated a six month contract from January 2009 through June 2009.
2. Specifically required the six month contract for the first half of 2009 to include that "expedited felony" cases be compensated on a "per case credit" basis, rather than handled on a calendar representation basis, and also required that clerical staffing ratios be budgeted on a 0.25 clerical staff to attorney basis.
3. Requires a report to the King County Council, with input from the Public Defense agencies and the KCBA that considers the options for representation in expedited felony cases, and the best practice for clerical staffing of the public defense agencies. This report is due to King County Council by February 1, 2009. This report will also outline proposed updates to the Public Defense Payment Model (King County Motion 12160), and provide input from the KCBA and the public defense agencies as to those updates.

The King County Office of the Public Defender would appreciate any assistance that the KCBA can provide in these efforts. Please contact me at your earliest convenience in order to discuss this process. I can be reached at 206-296-7641 or by e-mail at david.hocraffer@kingcounty.gov. Thank you for your time and consideration.

Sincerely,

V. David Hocraffer
The Public Defender

Enclosures

cc: Jackie MacLean, Director, Department of Community and Human Services



King County

**King County Office of the Public Defender
Presentation to the King County Bar Association
January 21, 2009**

I. OVERVIEW

- A. Public Defense Payment Model (2005) – King County Council Motion 12160
 - 1. Annual updates
 - 2. Three year revisions
 - 3. Principles: uniform payment per case; contractor system; attorney salary parity with King County Prosecuting Attorney's Office (PAO); overhead; direct costs

- B. King County budget issues, system responses
 - 1. PAO: FADS modifications
 - 2. King County District Court: expedited calendars established
 - 3. Countywide effort to seek budget savings, where possible

- C. King County Council (KCC) Office of the Public Defender (OPD) budget proviso
 - 1. Review/report on revisions to model, system changes (expedited calendars)
 - 2. Revised contracts timelines

II. REPORT / WORKGROUP

- A. Documents
 - 1. KCC Motion 12160 (Model)
 - 2. 2008 budget proviso
 - 3. Draft report



APPENDIX I

- B. Handouts
 - 1. Updated issues list

- C. Workgroup process

III. ISSUES / PRIORITIES

- A. Priorities identified:
 - 1. Expedited calendars attorney staffing
 - 2. Clerical staff support levels
 - 3. Attorney salary parity, including all senior attorneys at PAO
 - 4. Case weighting
- B. Other issues – see attached list

APPENDIX I

----- Original Message -----

From: Andrew Prazuch <AndrewP@KCBA.org>
To: Farley, Eileen; floris@defender.org <floris@defender.org>; Madsen, Don;
Daly, Anne; Hocraffer, David
Cc: Dave Roberson <Dave.Roberson@nwdefenders.org>; lisadaugaard@yahoo.com
<lisadaugaard@yahoo.com>; Heyd, Jana; Robinson, Jim
Sent: Wed Jan 28 20:02:16 2009
Subject: RE: Invitation to Attend KCBA Board Meeting Wednesday, January 21

Greetings all--

A quick update. KCBA is forming an ad hoc committee to review the issues you all presented to the board last week. While we had hoped to offer some useful and timely feedback at our meeting, it became apparent during the presentations that KCBA board members needed additional analysis before they could offer input.

I expect we'll be submitting comments directly to the Council sometime next month, and we'll be sure to be in touch with all of you if we need additional information. I'll also make sure you receive a copy of what we transmit.

Thanks again for appearing on such short notice at the bar's board meeting. And please know how much we appreciate all the hard work you've put into these discussions so far. It's a testament to the great public service vocation in which you're all engaged.

Regards,

Andrew Prazuch

KCBA Executive Director

andrewp@kcba.org

206-267-7061

APPENDIX I

From: Eileen Farley [mailto:Eileen.Farley@nwdefenders.org]
Sent: Wednesday, January 28, 2009 9:26 AM
To: Andrew Prazuch; floris@defender.org; don.madsen@metrokc.gov;
anne.daly@scraplaw.org; david.hocraffer@kingcounty.gov
Cc: Dave Roberson; lisadaugaard@yahoo.com; jana.heyd@scraplaw.org;
jim.robinson@kingcounty.gov
Subject: RE: Invitation to Attend KCBA Board Meeting Wednesday, January 21

Dear Andrew,

Thank you for the chance to speak with the King County Board about public defense. I hope the King County Bar Association will affirm its position that effective public defense requires not just lawyers but also support staff.

In 2008 each public defense agency was paid \$1116.85 for each felony credit plus an additional \$150.50 for rent, administration and indirect overhead--Director, accounting, human resources, etc. (Most felony cases are one "credit" some, like homicides, are two.) The combined \$1277.33 pays salary, taxes and benefits for the attorney and half time professional nonlegal staff, quarter time clerical staff, training, bar licenses, malpractice insurance, computers, paper as well as rent, administration and indirect cost. ,

The unilateral decision to reduce funding for clerical staff slashes an essential component of our practice. Clerical staff are not a "luxury" item. Each felony lawyer is responsible for 150 credits per year. Those lawyers cannot serve their own subpoenas, file all pleadings, open and close cases, answer all phone calls, arrange for clean clothing for clients to wear to trial in addition to appearing in court and meeting clients.

Clerical staff are essential. I ask the King County Bar Board affirm their importance and object to any reduction in staff funding.

Eileen Farley

APPENDIX I

From: Andrew Prazuch [mailto:andrewp@kcba.org]
Sent: Tuesday, January 20, 2009 1:53 AM
To: floris@defender.org; don.madsen@metrokc.gov; anne.daly@scraplaw.org;
Eileen Farley; david.hocraffer@kingcounty.gov
Subject: Invitation to Attend KCBA Board Meeting Wednesday, January 21

Dear Colleagues:

My apologies for the short notice, but I'm writing to invite you to join us at the King County Bar Association board meeting this Wednesday, January 21, during which we will be spending a very limited amount of time discussing the response you all have been working on to the county council's budget proviso regarding defender agency contracts.

Given time constraints, the KCBA board has only fifteen minutes on its agenda devoted to this discussion. Trustees have been sent a copy of the January 9 draft, and would appreciate hearing briefly for 3-4 minutes from Mr. Hocraffer first and then another 3-4 minutes from a representative of the four agencies. Our hope is that you could point out any areas of remaining disagreement where KCBA's input might be helpful. Trustees will then engage in a brief discussion, which we hope would be useful as you complete the final document that will be transmitted to the council.

We are scheduled to discuss this agenda item beginning at approximately 12:30pm. Our meeting is at the bar office, 1200 Fifth Avenue, Suite 600.

If you could reply to this message to confirm whether you can join this part of our meeting or not, I would appreciate hearing from you.

Regards,

Andrew Prazuch

KCBA Executive Director

andrewp@kcba.org

206-267-7061



Washington State Bar Association

Standards for Indigent Defense Services

On September 20, 2007, the Washington State Bar Association Board of Governors adopted updated Standards for indigent defense services as proposed by the WSBA Committee on Public Defense.

STANDARD ONE: Compensation

Standard:

Public defense attorneys and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys and staff in prosecutorial offices in the area.

For assigned counsel, reasonable compensation should be provided. Compensation should reflect the time and labor required to be spent by the attorney and the degree of professional experience demanded by the case. Assigned counsel should be compensated for out-of-pocket expenses.

Contracts should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, including, but not limited to, death penalty cases. Services which require extraordinary fees should be defined in the contract.

Attorneys who have a conflict of interest should not have to compensate the new, substituted attorney out of their own funds.

Flat fees, caps on compensation, and lump-sum contracts for trial attorneys are improper in death penalty cases. Private practice attorneys appointed in death penalty cases should be fully compensated for actual time and service performed at a reasonable hourly rate with no distinction between rates for services performed in court and out of court. Periodic billing and payment should be available. The hourly rate established for lead counsel in a particular case should be based on the circumstances of the case and the attorney being appointed, including the following factors: the anticipated time and labor required in the case, the complexity of the case, the skill and experience required to provide adequate legal representation, the attorney's overhead expenses, and the exclusion of other work by the attorney during the case. Under no circumstances should the hourly rate for lead counsel, whether private or public defender, appointed in a death penalty case be less than \$125 per hour (in 2006 dollars).

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-2.4 and 5-3.1.

American Bar Association, **Guidelines for the Appointment and Performance in Death Penalty Cases**, 1988, Standard 10-1.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standards 13.7 and 13.11.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV-4.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Standard III-10 and III-11.

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Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline No. 6.

STANDARD TWO: Duties and Responsibilities of Counsel

Standard:

The legal representation plan shall require that defense services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-1.1, 5-5.1 and 5-1.1.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standards 13.1.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard II-2.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Guideline III-18.

American Bar Association **Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases**
<http://www.abanet.org/deathpenalty/guidelines.pdf>

STANDARD THREE: Caseload Limits and Types of Cases

Standard:

The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.

The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year; or

300 misdemeanor cases per attorney per year; or in certain circumstances described below the caseload may be adjusted to no more than 400 cases, depending upon:

- The caseload distribution between simple misdemeanors and complex misdemeanors; or
- Jurisdictional policies such as post-filing diversion and opportunity to negotiate resolution of large number of cases as non-criminal violations;
- Other court administrative procedures that permit a defense lawyer to handle more cases

250 Juvenile Offender cases per attorney per year; or

80 open Juvenile dependency cases per attorney; or

250 Civil Commitment cases per attorney per year; or

200 Juvenile Status Offenses per attorney per year; or

1 Active Death Penalty cases at a time; or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Definition of Case:

A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which a public defense attorney is appointed in order to provide representation.

General Considerations:

Caseload limits should be determined by the number of cases being accepted and on the local prosecutor's charging and plea bargaining practices. If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the contracting agency should ensure that attorneys not accept more cases than they can reasonably discharge. In these situations, the caseload should be based on the percentage of time the lawyer devotes to public defense.

Related and Source Standards

American Bar Association, **Standards for Criminal Justice, 4-1.2, 5-4.3.**

ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. <http://www.abanet.org/deathpenalty/guidelines.pdf>

National Advisory Commission on Criminal Standards and Goals, **Task Force on Courts, 1973, Standard 13.12.**

American Bar Association Disciplinary Rule 6-101.

American Bar Association Ten Principles of a Public Defense Delivery System.

See,

<http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf> (2002).

ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases, (1996) American Bar Association, Chicago, IL

The American Council of Chief Defenders Ethical Opinion 03-01 (2003).

National Legal Aid and Defender Association, **Standards for Defender Services, Standards IV-I.**

National Legal Aid and Defender Association, **Model Contract for Public Defense Services** (2002), available on line at www.nlada.org/DMS/Documents/1025702469/Full%20volume.doc

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001, available online at <http://nacchildlaw.org/training/standards.html>)

City of Seattle Ordinance Number: 12501 (2004).

Seattle-King County Bar Association Indigent Defense Services Task Force,
Guideline Number 1.

Washington State Office of Public Defense, Proposed Standards for Dependency
and Termination Defense Attorneys (1999), available online at
<http://www.opd.wa.gov/Publications/Dependency%20&%20Termination%20Repor%20ts/1999%20Cost%20of%20Defense%20Dep%20&%20Ter.pdf>

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

Reasonable compensation for expert witnesses necessary to preparation and presentation of the defense case shall be provided. Expert witness fees should be maintained and allocated from funds separate from those provided for defender services. Requests for expert witness fees should be made through an ex parte motion. The defense should be free to retain the expert of its choosing and in no cases should be forced to select experts from a list pre-approved by either the court or the prosecution.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-1.4.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV 2d, 3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1983, Standard III-8d.

National Advisory Commission, **Task Force on Courts**, 1973, Standard 13.14.

STANDARD FIVE: Administrative costs

Standard:

Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract. Public defense attorneys should have an office that accommodates confidential meetings with clients and receipt of mail, and adequate telephone services to ensure prompt response to client contact.

Related Standards:

American Bar Association, **Standards for Criminal Justice, Providing Defense Services.**

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States, (1976), Guideline 3.4.**

National Legal Aid and Defender Association, **Standards for Defender Services, 1976 I-3, IV 2a-e, IV 5.**

STANDARD SIX: Investigators

Standard:

Public defender offices, assigned counsel, and private law firms holding public defense contracts should employ investigators with investigation training and experience. A minimum of one investigator should be employed for every four attorneys.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-4.1 and 5-1.14.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.14.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV-3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Standard III-9.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 8.

STANDARD SEVEN: Support Services**Standard:**

The legal representation plan should provide for adequate numbers of investigators, secretaries, word processing staff, paralegals, social work staff, mental health professionals and other support services, including computer system staff and network administrators. These professionals are essential to ensure the effective performance of defense counsel during trial preparation, in the preparation of dispositional plans, and at sentencing.

1. Legal Assistants - At least one full-time legal assistant should be employed for every four attorneys. Fewer legal assistants may be necessary, however, if the agency has access to word processing staff, or other additional staff performing clerical work. Defenders should have a combination of technology and personnel that will meet their needs.
2. Social Work Staff - Social work staff should be available to assist in developing release, treatment, and dispositional alternatives.
3. Mental Health Professionals - Each agency should have access to mental health professionals to perform mental health evaluations.
4. Investigation staff should be available as provided in Standard Six.
5. Each agency or attorney providing public defense services should have access to adequate and competent interpreters to facilitate communication with non-English speaking and hearing-impaired clients for attorneys, investigators, social workers, and administrative staff.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-8.1 and 5-1.4.

National Advisory Committee on Criminal Justice Standards and Goals, **Task Force on Courts**, Standard 13.14.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV-3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Standard III-8.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 7.

STANDARD EIGHT: Reports of Attorney Activity

Standard:

The legal representation plan shall require that the defense attorney or office maintain a case-reporting and management information system which includes number and type of cases, attorney hours and disposition. This information shall be provided regularly to the Contracting Authority and shall also be made available to the Office of the Administrator of the Courts. Any such system shall be maintained independently from client files so as to disclose no privileged information.

A standardized voucher form shall be used by assigned counsel attorneys seeking payment upon completion of a case. For attorneys under contract, payment should be made monthly, or at times agreed to by the parties, without regard to the number of cases closed in the period.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-3.3. (b) xii, The Report to the Criminal Justice Section Council from the Criminal Justice Standards Committee, 1989.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984 Standard III-22.

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States**, 1976, Guideline 3.4, 4.1, and 5.2.

STANDARD NINE: Training**Standard:**

The legal representation plan shall require that attorneys providing public defense services participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice.

In offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held to inform them of office procedure and policy. All attorneys should be required to attend regular in-house training programs on developments in criminal law, criminal procedure and the forensic sciences.

Attorneys in civil commitment and dependency practices should attend training programs in these areas. Offices should also develop manuals to inform new attorneys of the rules and procedures of the courts within their jurisdiction.

Every attorney providing counsel to indigent accused should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and other media.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-1.4.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.16.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard V.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Standard III-17.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 3.

National Legal Aid and Defender Association, **Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases**, 1988, Standard 9.1.

STANDARD TEN: Supervision

Standard:

Each agency or firm providing public defense services should provide one full-time supervisor for every ten staff lawyers or one half-time supervisor for every five lawyers. Supervisors should be chosen from among those lawyers in the office qualified under these guidelines to try Class A felonies. Supervisors should serve on a rotating basis, and except when supervising fewer than ten lawyers, should not carry caseloads.

Related Standards:

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.9.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contract**, 1984, Standard III-16.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 4.

STANDARD ELEVEN: Monitoring and Evaluation of Attorneys

Standard:

The legal representation plan for provision of public defense services should establish a procedure for systematic monitoring and evaluation of attorney performance based upon publicized criteria. Supervision and evaluation efforts should include review of time and caseload records, review and inspection of transcripts, in-court observations, and periodic conferences.

Performance evaluations made by a supervising attorney should be supplemented by comments from judges, prosecutors, other defense lawyers and clients. Attorneys should be evaluated on their skill and effectiveness as criminal lawyers or as dependency or civil commitment advocates.

Related Standards:

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Standard III-16.

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States**, 1976, Recommendations 5.4 and 5.5.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.9.

STANDARD TWELVE: Substitution of Counsel

Standard:

The attorney engaged by local government to provide public defense services should not sub-contract with another firm or attorney to provide representation and should remain directly involved in the provision of representation. If the contract is with a firm or office, the contracting authority should request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet minimum qualifications. The employment agreement shall address the procedures for continuing representation of clients upon the conclusion of the agreement. Alternate or conflict counsel should be available for substitution in conflict situations at no cost to the counsel declaring the conflict.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, Standard 5-5.2.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.1.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Guideline III-23.

STANDARD THIRTEEN: Limitations on Private Practice of Contract Attorneys

Standard:

Contracts for public defense representation with private attorneys or firms shall set limits on the amount of privately retained work which can be accepted by the contracting attorney. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-1.2(d), 5-3.2.

American Bar Association, **Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation**, May 13, 2006, Formal Opinion 06-441. <http://www.abanet.org/cpr/pubs/ethicopinions.html>

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.7.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard III-3 and IV-1.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Guideline III-6.

STANDARD FOURTEEN:**QUALIFICATIONS OF ATTORNEYS**

1. In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services should meet the following minimum professional qualifications:

- A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court;
- B. and be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and
- C. be familiar with the collateral consequences of a conviction, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and
- D. Be familiar with mental health issues and be able to identify the need to obtain expert services; and
- E. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

2. Trial attorneys' qualifications according to severity or type of case:

A. Death Penalty Representation. Each attorney acting as lead counsel in a death penalty case or an aggravated homicide case in which the decision to seek the death penalty has not yet been made shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. at least five years criminal trial experience; and
- iii. have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
- iv. have served as lead or co-counsel in at least one jury trial in which the death penalty was sought; and
- v. have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. have completed at least one death penalty defense seminar within the previous two years; and
- vii. meet the requirements of SPRC 2.¹

¹ SPRC 2

APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

B. Adult Felony Cases - Class A. Each staff attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

i. Minimum requirements set forth in Section 1, and

responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2(f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified counsel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel.

Available at

http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=SPRC&ruleid=supsprc2.

- ii. Either: has served two years as a prosecutor; or
 - a. has served two years as a public defender; or two years in a private criminal practice, and
 - b. has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases - Class B. Violent Offense or Sexual Offense. Each attorney representing a defendant accused of a Class B violent offense or sexual offense as defined in RCW 9A.20.020 shall meet the following requirements:

- i. Minimum requirements set forth in section 1, and
- ii. Either:
 - a. has served one year as prosecutor; or
 - b. has served one year as public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation. Each staff attorney representing a defendant accused of a Class B felony not defined in c above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. Minimum requirements set forth in section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
- iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
- iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

E. Persistent Offender (Life Without Possibility of Release) Representation. Each attorney acting as lead counsel in a "two-strikes" or "three strikes" case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;² and

² RCW 10.01.060 provides that counties receiving funding from the state Office of Public Defense under that statute must require "attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar

- ii. Have at least:
 - a. four years criminal trial experience; and
 - b. one year experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. experience as counsel in cases involving each of the following:
 - 1) Mental health issues; and
 - 2) Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
 - 3) Expert witnesses; and
 - 4) One year of appellate experience or demonstrated legal writing ability.

F. Juvenile Cases - Class A - Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. Minimum requirements set forth in section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; one year in a private criminal practice and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

G. Juvenile Cases - Classes B and C - Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. Minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice, and

association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies.

c. as been trial counsel alone in five misdemeanor cases brought to a final resolution; and

iii. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

H. Juvenile Status Offenses Cases. Each attorney representing a client in a "Becca" matter shall meet the following requirements:

i. The minimum requirements as outlined in Section 1; and

ii. Either:

a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to "status offense" cases or

b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

I. Misdemeanor Cases. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

J. Dependency Cases. Each attorney representing a client in a dependency matter shall meet the following requirements:

i. The minimum requirements as outlined in Section 1; and

ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.

iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.

iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state Office of Public Defense resource attorney or other attorney qualified under this section.

K. Civil Commitment Cases. Each attorney representing a respondent shall meet the following requirements:

i. Minimum requirements set forth in Section 1; and

ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and

iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:

- a. served one year as a prosecutor, or
- b. served one year as a public defender, or one year in a private civil commitment practice, and
- c. been trial counsel in five civil commitment initial hearings; and
- iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing,

L. Sex Offender "Predator" Commitment Cases

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years criminal trial experience; and
 - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 - 1) Mental health issues; and
 - 2) Sexual offenses; and
 - 3) Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

M. Contempt of Court Cases

Each attorney representing a respondent shall meet the following requirements:

- i. Minimum requirements set forth in Section 1; and
- ii. Each staff attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

N. Specialty Courts

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. Minimum requirements set forth in Section 1; and
- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and
- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

3. Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

- A. The minimum requirements as outlined in Section 1; and
- B. Either:

- i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
- ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
- iii. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions.

RALJ Misdemeanor Appeals to Superior Court: Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

4. Legal Interns.

- A. Legal interns must meet the requirements set out in APR 9.
- B. Legal interns shall receive training pursuant to APR 9 and Standard Nine, Training.

Related Standards:

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National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Standard 13.15.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Public Defense Contracts**, 1984, Standard III-7.

National Legal Aid and Defender Association, **Standards for the Appointment and Performance of Counsel in Death Penalty Cases**, 1987, Standard 5.1.

STANDARD FIFTEEN: Disposition of Client Complaints

Standard:

Each agency or firm or individual contract attorney providing public defense services shall have a method to respond promptly to client complaints. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the contracting authority or public defense administrator should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week.

Related Standards:

The American Bar Association, Standards for Criminal Justice, 4-5.1 and 4-5.2.

**STANDARD SIXTEEN: Cause for Termination of Defender Services and
Removal of Attorney**

Standard:

Contracts for indigent defense services shall include the grounds for termination of the contract by the parties. Termination of a provider's contract should only be for good cause. Termination for good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of the standards herein addressed.

Removal by the court of counsel from representation normally should not occur over the objection of the attorney and the client.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, Standard 5-1.3, 5-5.3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Guideline III-5.

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States**, 1976, Recommendations 2.12 and 2.14.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.8.

STANDARD SEVENTEEN: Non-Discrimination

Standard:

Neither the Contracting Authority, in its selection of an attorney, firm or agency to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, gender, sexual orientation or disability. Both the contracting authority and the contractor shall comply with all federal, state, and local non-discrimination requirements.

Related Standards:

American Bar Association, **Standards for Criminal Justice, Providing Defense Services, Standard 5-3.1.**

National Legal Aid and Defender Association, **Standards for Defender Services, 1976, Standard III-8.**

STANDARD EIGHTEEN: Guidelines for Awarding Defense Contracts

Standard:

The county or city should award contracts for public defense services only after determining that the attorney or firm chosen can meet accepted professional standards. Under no circumstances should a contract be awarded on the basis of cost alone. Attorneys or firms bidding for contracts must demonstrate their ability to meet these standards.

Contracts should only be awarded to a) attorneys who have at least one year's criminal trial experience in the jurisdiction covered by the contract (i.e., City and District Courts, Superior Court or Juvenile Court), or b) to a firm where at least one attorney has one year's trial experience.

City attorneys, county prosecutors, and law enforcement officers should not select the attorneys who will provide indigent defense services.

Related Standards:

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Standard IV-3.

King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Statement of Purpose.



E-Filing Frequently Asked Questions

Questions? Email to Eservices@kingcounty.gov or call (206) 205-1600

1. What can I E-File in the King County Superior Court?

Use E-Filing to send documents electronically to the Superior Court Clerk's Office for processing and entry into the official case file. E-Filing allows you to:

- initiate new cases in the King County Superior Court, paying filing fees on line;
- complete on-line forms and E-File them in a case file;
- electronically sign and E-File a PDF or imaged document (sealed or open);
- opt in to receive service electronically from other parties in the case;
- electronically serve e-filed documents on other parties to the case (if they have opted in).

2. What tools do I need to E-File?

You do not need special software—E-Filing uses your Web browser and works with any operating system. At the King County Superior Court Clerk's Web site (www.kingcounty.gov/courts/clerk), select the "E-Filing" button to begin. *Your link to the E-Filing system is a secure Internet connection; it prevents anyone from intercepting or viewing what you are E-Filing.*

To E-File, you first set up your own User LoginID, Password, and PIN, a one-time step. *General Rule (GR) 30* which authorizes E-Filing in the Washington State courts, requires this to identify you as a registered e-filer.

Initial Sign-Up: Select "First time filer?" at the opening screen and complete the simple registration form. The Administrative Office of the Courts (AOC) keeps the official record of E-Filer User LoginIDs. A confirmation appears after you correctly set up your LoginID, Password, and PIN. Use them to log in to the King County E-Filing application.

Follow these steps to set up your Logon ID, password, and PIN:

- a. Select First time filer?
- b. Select "Expanded."
- c. Fill in the REQUIRED fields on the form:
First Name
Last Name
Date of Birth
- d. For "Driver License #" (no longer required by GR 30, but required to complete this form) enter "ABCD" or any few letters and numbers.
- e. Create and enter your own 8-character Logon ID—WRITE IT DOWN*.
- f. Create and enter your 8-character Password — and WRITE IT DOWN*.
Password must contain atleast: one special character (\$, # and@ symbols) and 2 of the following 3: uppercase letters, lowercase letters and numbers.

*There will be no e-mail message to tell you what you entered.

3. Is King County E-Filing the same as in federal court?

No. They are separate and distinct systems. Like the federal courts, King County accepts E-Filings if they are in PDF (Portable Document Format), and also accepts imaged documents in TIF (Tagged Information File) format. Your E-Filing must be for a valid case and it must be virus-free, unlocked, and unencrypted. Signatures are handled differently in E-Filings in courts in the State of Washington (see below).

4. When can I E-File?

You can submit documents for E-Filing at any time, but they will be officially date/time stamped based on when the Clerk's Office is open (8:30 to 4:30, M-F, except for holidays). The E-Filing application is running most of the time, including nights and weekends, except when down due to data backups, maintenance, or technical

APPENDIX K

problems.

5. Does E-Filing change any Superior Court rules or procedures?

No procedures, deadlines, or other requirements have been changed for E-Filing. E-Filing results in somewhat faster processing of documents and data.

6. Can I view electronic filings on the Internet?

Some records are available on-line through the Clerk's "ECR ONLINE" application. Pursuant to Local General Rule (LGR) 31, online access to the ECR system via the Internet is restricted to non-sealed documents and cases filed after November 1, 2004, and forward and is limited to the following case types: Criminal cases, with a number 1 as the third digit of the case number; Civil cases, with a number 2 as the third digit of the case number, with the exceptions of petitions for domestic violence protection orders and petitions for anti-harassment protection orders; Probate cases, with a number 4 as the third digit of the case number, except for guardianship cases. There is a charge of 10¢ per page to view documents online.

7. Is E-Filing required?

No. E-Filing is voluntary.

8. What features are in the E-Filing program?

To file a new case, select 'Start New Case'. You will be prompted to indicate the case type, designation area, case title, and other details. You may then upload the needed initial document(s), in PDF or TIF format, after which you will be asked to complete payment. Use a credit card or Internet check to pay the filing fees (plus modest convenience fees charged by the King County "E-Commerce" program).

To complete an online form, select 'Complete Online Forms for E-Filing'. This will open the chosen form in the Adobe Reader program (a free program which you must have to do this). You fill in blanks and Tab from field to field until the document is complete. You then proceed to E-File the finished form.

To E-File documents in an existing case, select 'E-File Documents'. This will open the 5-step "wizard" that will lead you through the process. You will be prompted to select the document type, fill in specific information about your document, browse to and upload the PDF or TIF file you are submitting, add attachments if needed, and use the 'E-File Now' button to submit the document(s) when ready to do so. After submitting the E-Filing, you may review and save or print the Confirmation Receipt page which has details about what you have just E-Filed.

Power User E-Filing is for managing multiple E-Filing transactions in more than one case. It provides a worksheet where all of the functions relating to E-Filing can be performed. This feature is suitable for handling complex E-Filings, documents pending review or signature by other users, or multiple documents that will be E-Filed in different cases.

9. How are E-Filings to be signed?

Documents that are filed and signed using the procedures of GR 30 as originally adopted continue to be accepted in the King County E-Filing application.

New methods for signing e-filed documents authorized by GR 30 as amended:

State Digital Signature :

Any attorney, party, or other signer may still sign any e-filed document using a State-issued Digital Signature (RCW 19.34). See <http://www.secstate.wa.gov/ea> for information. Evidence of this signing method appears as a few lines of code unique to that individual and the item being signed. (Adding a brief statement that a Washington State Digital Signature was used may help avoid questions about the signature.)

ATTORNEYS: Is Formatted Signature:

An attorney may electronically sign an e-filed document by using an "s/" ("ess - slash") signature, formatted as follows (example from GR 30):

s/John Attorney
State Bar Number 12345
ABC Law Firm
123 South Fifth Avenue
Seattle, WA 98104

APPENDIX K

Telephone: (206) 123-4567

Fax: (206) 123-4567

E-mail: John.Attorney@lawfirm.com

NON-ATTORNEYS: /s Formatted Signature:

A non-attorney may electronically sign an e-filed document, provided it is not sworn under penalty of perjury and it does not have multiple signers, by using an "s/" ("ess - slash") signature, formatted as follows (example from GR 30):

s/John Citizen

123 South Fifth Avenue

Seattle, WA 98104

Telephone: (206) 123-4567

Fax: (206) 123-4567

E-mail: John.Citizen@email.com

Imaged Pages with Pen-and-Ink Signatures:

Electronically filed documents from non-attorneys that are sworn under penalty of perjury and documents signed by multiple persons not using State digital signatures are to be e-filed with scanned images of the physical ("pen-and-ink") signatures of those persons. *The documents with those "original signatures" must be retained by the e-filer until at least 60 days following the completion of the case, including the running of all appeals.*

When an attorney has permission to sign an e-filed document on behalf of others, the attorney may do so, provided the attorney expressly states in the document that authorization to sign on behalf of the others was given. The attorney creates "s/" ("ess - slash") signatures for such persons, as in the examples above.

10. What information can I access about my E-Filing activities?

Select 'View' and then 'Filing Status' from the menu in the upper, right part of the screen, to access any of the five tabs there: 'In Progress' provides information and links to documents for which you have initiated but not completed the E-Filing process. 'Sign / Submit' contains information and links to documents awaiting signatures or ready to be E-Filed. The next three tabs provide a 30-day record of the documents E-Filed under your User LoginID including those which have been 'Received' by the Clerk's Office, 'Processed' into the case file, or 'Rejected', including reasons for rejection.

 [Click here to E-File documents with the King County Superior Court Clerk's Office.](#)

[Home](#) | [Privacy](#) | [Accessibility](#) | [Terms of use](#) | [Search](#)

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King County

Department of Judicial Administration
 Barbara Miner
 Director and Superior Court Clerk
 (206) 296-9300 (206) 296-0100 TTY/TDD

January 21, 2009

David Hocraffer
 Office of Public Defense
 123 Third Avenue, Suite 400
 Seattle, WA 98104

RE: Electronic Court Records

Dear Mr. Hocraffer:

You have asked for my input in regards to a letter you received from the agency directors related to costs associated with Electronic Court Records, both viewing and electronically filing documents. I have had a chance to review the letter and thank you for the opportunity to respond.

A bit of background may be helpful. Prior to 2000 all court files were kept in the Clerk's Office and access to them was limited to the office hours of 8:30 – 4:30. Files were accessed in our office or a court order was needed that allowed for the removal of a court file from this office. Beginning in January 2000 court files were scanned and in 2002 we allowed WAN users to access them electronically. Many of our file users found this to be a huge savings in time, effort, and cost associated with paying for copies made in our office.

There has been some discussion that the defender agencies may move off the WAN. This would prevent them from accessing ECR in the same way they access it while on the WAN. I have spoken with directors from all agencies and have met with our Technology Division manager to find alternative solutions. We have identified a solution that can be used to continue providing defender agencies with access to ECR if they are outside the WAN at no cost to them. I have asked that when an agency is ready to move off the WAN they contact my office so that we can work on the alternative solution together.

Our electronic filing (e-filing) application has been in use since 2005. We have recently made significant improvements that make E-filing even easier to use. In fact, the new version will likely be released in March, of this year. In June of this year many documents will need to be filed electronically, instead of in paper form. This means a user must sign on to the system, which is a web based application. Once signed on the user identifies the type of document they are filing and then uploads the document in PDF or TIF format. The user is given a confirmation receipt and the process is over. Converting a document to PDF is as simple as printing or saving a document and there is free conversion software available.

If agencies keep the paper copy of the document then the only part of the process that changes is how the document is delivered to the Clerk's office. This would require no additional electronic storage space for

Seattle:
 516 Third Avenue Room E609
 Seattle, WA 98104-2386

Regional Justice Center:
 401 Fourth Avenue North Room 2C
 Kent, WA 98032-4429

Juvenile Section:
 1211 East Alder #307
 Seattle, WA 98122-5598

David Hocraffer
January 21, 2009
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the agencies. If an agency decides they want to store their copy electronically they would need the storage space required for their documents. This would then mean a savings of at least two copies of the document that need not be produced in paper form, the Clerk's copy and the attorney's copy.

There are simple ways to add attachments to documents in the e-filing system. For example a motion can be filed and an attachment, like a letter, can be added to that motion. If a document is scanned on a copier, as is mentioned in the letter, there is no need to convert it to PDF because it would already be in TIF format.

In the letter there is mention that it would be too much work to research which prosecutors have opted to be served electronically and which have not. The e-filing system actually alerts the filer at the time of filing if service can be done electronically through the e-filing application. There is no additional research needed and a confirmation of service can be printed from the system. I would encourage that the defenders take the first step and agree to be served electronically and then work with the prosecutor's office in regards to e-service.

E-filing is definitely a change in practice and my office is available for training on the new version of e-filing once it has been released. The time it takes to e-file a document using the e-filing system is definitely shorter than the time it takes for someone to come to the physical location of the Clerk's office. Much like the agencies have identified a savings in being able to look at documents without coming in to the office, it will not cost them additional time to file from their office.

I agree that E-filing offers significant long term benefits to the county. There is a learning curve and business processes will need to change, which does take time.

Please let me know if you need any additional information.

Thank you,

Barbara Miner
Director and Superior Court Clerk

Seattle:
516 Third Avenue Room E609
Seattle, WA 98104-2386

Regional Justice Center:
401 Fourth Avenue North Room 2C
Kent, WA 98032-4429

Juvenile Section:
1211 East Alder #307
Seattle, WA 98122-5598

NORTHWEST DEFENDERS ASSOCIATION

1111 Third Avenue, Suite 200, Seattle, WA 98101-3292
Phone: (206) 674-4700 Fax: (206) 674-4702

Jackie MacLean, Director
Department of Community and Human Services
401 Fifth Avenue, Suite 510
Seattle, WA 98104

David Hocraffer
Office of Public Defense
123 Third Avenue, Suite 400
Seattle, WA 98104

Re: Electronic Filing Costs

Dear Director MacLean and Mr. Hocraffer:

I drafted the letter set out below and circulated it among the other three agency directors. After reviewing it all three asked to add their names to the letter. While the second portion of the letter refers to NDA all four agencies share the concern I raised that the proposal to restrict public defense access to Electronic Court Records ("ECR") and to require public defender agencies to file all documents electronically will result in significant costs to the agencies.

Restricted Access to ECR

At present the King County Clerk's Office stores all court records on the county Wide Area Network ("WAN"). The clerk's office stores only limited documents on the web and there is a charge to view or copy them.

Pursuant to Local General Rule (LGR) 31, online access to the ECR system via the Internet is restricted to non-sealed documents and cases filed after November 1, 2004, and forward and is limited to the following case types: Criminal cases, with a number 1 as the third digit of the case number; Civil cases, with a number 2 as the third digit of the case number, with the exceptions of petitions for domestic violence protection orders and petitions for anti-harassment protection orders; Probate cases, with a number 4 as the third digit of the case number, except for guardianship cases. There is a charge of 10¢ per page to view documents online.

The clerk's office does not store on the web records in many of the case areas in which the public defense agencies practice—Dependencies, "Becca" cases, Juvenile Offender matters, and Paternity actions relating to Family Support Proceedings and Involuntary Treatment/Civil Commitment cases. The staff cost to the agencies and to the clerk's office if we are required to physically pull those records and pre-2004 cases will be significant.

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In addition, the 10 cent cost per page to view and to copy documents that are on the web will be ruinously expensive. The agencies use ECR to run conflict checks, to check criminal history when computing clients' offender scores and, in Dependency cases where we often are appointed after the case have been in progress, to recreate the file. In my opinion it would cost this agency, which is the smallest of the four agencies, thousands of dollars to view documents stored on the web.

Allowing the agencies access to ECR through a VPN, would be the most cost effective way of maintaining the efficiencies and cost savings created by ECR and incorporated in to public defense practices.

Electronic Filing

As you requested at our meeting last week I have gathered information about the impact of mandatory electronic ("E-filing") beginning July 1, 2009. The draft budget proviso report concluded E-filing would not require much attorney time or increase costs. My conclusion, after talking with attorneys in each of the units in this office is that it will have varying degrees of impact but in the Dependency and Contempt of Court practices will sharply increase cost and demands on staff time.

All word created documents can be converted to a pdf using the free software provided by the clerk's office. This will require training the attorneys how to create the documents and how to save them in our electronic case management system. Over time there will also be increased demand for service space in which to store documents.

All documents the attorneys or staff do not create-treatment reports, letters from family, lab results, pictures etc will have to be scanned, converted to pdf and then attached to the motion they support in some electronic fashion that will, again, require attorney training and time. Scanning documents will also require significant time. It will also require a dedicated scanner because most copy machines that include scanners, such as the ones NDA uses, make the copier function unusable when the scanner is in use. The scanner is a wonderful feature but it is a slow and cumbersome process to convert documents into electronic form and then store them with each case.

The offices will not save on paper costs unless the prosecutor's offices and other parties are required to accept electronic service. If only some prosecutors, in some cases, opt in to the electronic filing we will be forced to make paper copies in every case because the volume of cases does not permit the individual review needed to determine whether a prosecutor is in or out of E-filing.

The Dependency lawyers told me that they routinely attach to motions expert reports, results of client drug testing, treatment records, school records and other materials. Dependency files easily and often fill several file boxes. If we must scan, convert and store all this material it will take significant staff time and equipment.

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In Contempt of Court proceedings the lawyers routinely file financial declarations that clients write out, copies of job contacts and bills and other financial records. Again, especially given the volume of cases, the scanning, converting and filing will require significant staff time and monopolization of the office copier.

I think E-filing offers significant long term benefits to the county. The Office of the Clerk has been a leader in developing electronic court records systems. It will not, however, result in only a minimal increase in attorney time or little equipment cost to the offices. I ask that the proviso report be amended to reflect that.

Please let me know if you have any questions or need additional information.

Very truly yours,

Eileen Farley, Executive Director
Northwest Defenders Association

Anne Daly, Executive Director
Society of Counsel Representing
Accused Persons

Don Madsen, Executive Director
Director
Associated Counsel for the Accused

Floris Mikkelsen, Executive
The Defender Association

APPENDIX N

Attorney Salary Levels Upto Senior III July 2008

PAO Attorney staffing

	Budgeted	Average	Closest	Kenn	Actual	% of
	Budgeted	Budget for	Kenny scale	y	FTEs	Actual
	FTEs	Total Budget the Class	Level	Level	(July 08)	FTEs
DEPUTY I	1.00	53,968.00	54,516.00	1.20	7.00	8.56%
DEPUTY II	2.00	111,645.00	57,497.18	2.10	11.00	13.45%
DEPUTY III	14.00	852,886.00	62,748.04	2.20	11.00	13.45%
DEPUTY IV	15.60	1,099,927.00	72,623.39	2.20	12.60	15.40%
DEPUTY V	48.20	4,091,374.00	87,429.78	4.30	40.20	49.14%
Total Deputies	80.80		88,394.00		81.80	
Senior I	27.60	2,671,726.00	99,705.72	1.4	22.60	48.09%
Senior II	18.40	1,963,976.00	109,939.96	2.7	14.40	30.64%
Senior III	12.00	1,345,504.00	115,489.09	3.4	10.00	21.28%
Total Seniors	58.00		116,380.56		47.00	
Senior Deputies in total	138.80				128.80	
Deputies in Total	42%				36%	
	58%				64%	

Allocating OPD Model Attorney staffing based on PAO budget

	PAO Budgeted	PAO Actual	2008 OPD Model FTEs	OPD Match Case Load
Seniors	58	47.00	39.00	69.78
Deputies/Attorneys	80.8	82.00	138.00	97.22
Total	138.8	129	177	167.00
% seniors in total	0.42	0.36	0.22	0.42
% Attorneys in total	0.58	0.64	0.78	0.58

Allocating Model Attorney Staffing on Kenny Scale based on actual PAO FTEs

	OPD Model Allocation	PAO FTEs	% of
Total Attorneys	2.1	21.34	22.0%
	2.2	27.99	28.9%
	4.3	47.67	49.1%
Total Seniors (Includes supervisors)	1.4	33.66	48.1%
	2.7	21.45	30.6%
	3.4	14.89	21.3%
Total Seniors (Includes supervisors)	70.00		

APPENDIX O

Attorney Salary Level including PAO up to Senior III as of January 2009

Title	BaseFTE	Salary	% In Total	% In Class	Kenny Levels	Kenny Salary
Senior Deputy Pros Atty IV Total	0	967,197.09	0%	0%		
Senior Deputy Pros Atty III Total	16	1,754,670.10	12%	25%	3.1	109,945.70
Senior Deputy Pros Atty II Total	18.2	1,878,008.46	13%	28%	2.1	103,323.46
Senior Deputy Pros Atty I Total	30.6	2,891,461.18	22%	47%	1.5	99,544.81
Senior Deputy Pros Atty V Total	0	769,810.26	0%	0%		
	64.8			100%		
Deputy Pros Atty V Total	42.4	3,491,481.10	31%	58%	4.2	83,536.91
Deputy Pros Atty IV Total	11.2	812,135.34	8%	15%	3.1	73,742.00
Deputy Pros Atty III Total	15	973,907.14	11%	20%	2.2	64,410.00
Deputy Pros Atty II Total	5	313,550.70	4%	7%	2.2	64,410.00
Grand Total	73.6	5,863,708.94		100%		
% of Seniors in total	138.4	14,528,000.01	100%			
% of Deputies in Total	46.8%					
	53.2%					

Allocating Public Defense Attorneys between Senior and Staff Attorneys
Assuming a 167 attorneys base on case load

Seniors	78
Staff Attorneys	89
Total	167

Allocating public defense attorney with in each group at Kenny levels

Kenny Level	Salary	%
2.2	64410	15%
3.1	73742	8%
4.4	87685	31%
1.6	99791	22%
2.1	103323	13%
3.1	109946	12%
4.x	126800	0%
4x1	134563	0%
Total Salary		
	9,661,50	
	5,899,36	
	27,182,35	
	22,063,62	
	13,587,27	
	12,710,52	
	91,104,62	

Attorney Salary Level Including PAO Senior IV & V January 2009

APPENDIX P

Title	Base FTE	Salary (No COLA)	Average	% In Total	% In Class	Kenny Levels	Kenny Salary
Senior Deputy Pros Atty IV Total	8	967,197	120,900	5.2%	10.2%		
Senior Deputy Pros Atty III Total	16	1,754,670	109,667	10.5%	20.3%	3.1	109,945.70
Senior Deputy Pros Atty II Total	18.2	1,878,008	103,187	11.9%	23.1%	2.1	103,323.46
Senior Deputy Pros Atty I Total	30.6	2,891,461	94,492	20.1%	38.8%	1.5	99,544.81
Senior Deputy Pros Atty V Total	6	769,810	128,302	3.9%	7.6%		
Deputy Pros Atty V Total	78.8	8,261,147	104,837		100.0%		
Deputy Pros Atty IV Total	42.4	3,491,481	82,346	27.8%	57.6%	4.2	83,536.91
Deputy Pros Atty III Total	11.2	812,135	72,512	7.3%	15.2%	3.1	73,742.00
Deputy Pros Atty II Total	16	973,907	64,927	9.8%	20.4%	2.2	64,410.00
Deputy Pros Atty I Total	5	313,351	62,670	3.3%	6.8%		
Grand Total	152.4	5,863,709	79,670		100.0%		
% of Seniors In total		14,528,000	95,328	100%			
% of Deputies In Total				48.3%			

Allocating Public Defense Attorneys between Senior and Staff Attorneys
Assuming a 167 attorneys base on case load

Seniors	86
Staff Attorneys	81
Total	167

Allocating public defense attorney with in each group at Kenny levels

Kenny Level	Salary	% In total	% In total	8,437.71
2.2	64410	13%		
3.1	73742	7%		5,383.17
4.2	83637	28%		23,223.29
1.5	99545	20%		20,008.55
2.1	103323	12%		12,285.44
3.1	109946	11%		11,544.33
4x	120900	5%		6,286.80
4x1	128302	4%		5,003.78
Total Salary				92,183.05

APPENDIX Q

Professional Staff Market Survey 2008

Employer	Title	Min Salary	Max Salary	Min Annual Salary	Max Annual Salary	Average at Max
Paralegals						
Pierce County	Paralegal 2	21,29	26,57	44,283	55,266	
King County (Executive Branch)	Paralegal	18,88	23,93	39,261	49,765	
Washington State	Paralegal 2	42,480	54,372	42,480	54,372	
Salary.com	Paralegal 1	35,762	65,582	35,762	65,582	
Salary.com	Paralegal 2	45,171	74,139	45,171	74,139	
King County Prosecuting Attorney	Paralegal	40,868	51,803	40,868	51,803	
Market Average				41,304	58,488	46,339
						42,840

Employer	Title	Min Salary	Max Salary	Min Annual Salary	Max Annual Salary	Average at Max
Investigators						
Pierce County	Investigator/Process	20,93	26,33	43,534	54,766	
Pierce County	Investigator/Process	23,66	29,93	49,213	62,254	
Washington State	Attorney General In	43,536	55,716	43,536	55,716	
Salary.com	Detective/Investigat	28,117	62,166	28,117	62,166	
Shpohomish County Public Defender	Investigator			0		
Market Average				41,100	58,726	48,170
						45,691

Employer	Title	Min Salary	Max Salary	Min Annual Salary	Max Annual Salary	Average at Max
Social Workers						
King County	Social Worker	24,50	31,06	50,963	64,599	
University of Washington	Social Worker 2	4,077	5,832	48,924	69,984	
Washington State	Social Worker 3	39,432	50,484	39,432	50,484	
Salary.com	Social Worker (Bac	39,959	57,164	39,432	50,484	
Salary.com	Social Worker (Mas	46,808	65,000	46,808	65,000	
Fred Hutchinson	Social Worker 2			0		
Market Average				45,112	60,110	54,204
						46,207

low	high	Average	# FTEs	Survey	Current Contract	Total
41,304.18	58,487.84	49,896.01		25	1,247,400.26	1,294,125.00
45,111.87	60,110.20	52,611.03		15	789,165.46	776,475.00
41,100.05	58,725.70	49,912.88		42	2,096,340.75	2,174,130.00
				82	4,132,906.46	4,244,730.00
					50,401.30	51,765.00
						-1,363.70

APPENDIX R



Lisa Daugaard <daugaard@defender.org>

**request for help from King County defender agencies:
quick survey re paralegal salaries in criminal defense
firms**

Lisa Daugaard <daugaard@defender.org>

Tue, Dec 23, 2008 at 10:44 PM

To: michael_filipovic@fd.org, todd@ahmlawyers.com, steve@ehwlawyers.com, steve@furybailey.com,
poffenbecher@skellengerbender.com, "Lee, Amanda" <lee@sgb-law.com>, Amy Muth
<amy@rhodesmeryhew.com>, kcostello@costello-black.com, anna@annatolin.com, mprothero@hiplawfirm.com

Holiday greetings ... and a request.

We need your help – and it should only take two minutes!

The King County public defender agencies are seeking input from 10 respected criminal defense firms, including yours, regarding paralegal salary levels. We are engaged in a time-sensitive discussion with King County about the actual cost of effective public defense, and the real cost of skilled paralegals is part of that discussion.

Any information you can provide in response to this short survey would be appreciated. There are only three questions and it should not take more than a minute or two to complete. All responses are confidential to us unless you wish to indicate your name or the name of the firm.

Here is the link to the survey:

http://www.surveymonkey.com/s.aspx?sm=v15EE2UhScZc_2bnsOuBmLJw_3d_3d

Thank you very much for your help.

Sincerely,

Lisa Daugaard
Deputy Director
The Defender Association
(206) 447-3900 x729

*+ Mike Lane /
Coburn + Lane*

APPENDIX R

survey title: paralegal salary survey for OPD	
current report: Default Report 	
Displaying 4 of 4 respondents	
Response Type: Normal Response	Collector: paralegal salary survey (Web Link)
Custom Value: empty	IP Address: 65.160.59.199
Response Started: Mon, 12/29/08 2:50:48 PM	Response Modified: Mon, 12/29/08 4:06:40 PM
1. What is the ratio of criminal defense lawyers to paralegals in your firm (i.e., how many lawyers compared to how many paralegals)?	
1.57 attorneys to 1.0 paralegals	
2. What is the salary range for paralegals working with criminal defense lawyers in your firm? Answer may be annual salary or hourly salary. (Please include salary only, excluding any other benefits and compensation.)	
Annual salary range is \$47,655.00 to \$123,000.	
3. What is the approximate average salary of paralegals working with criminal defense lawyers in your firm? (Again, answer can be annual salary or hourly salary.)	
Average annual salary is \$77,874.	

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http://www.surveymonkey.com/MySurvey_ResponsesDetail.aspx?sm=fngbT%2bIMT7Npg... 1/2/2009

APPENDIX R

survey title: paralegal salary survey for OPD	
current report: Default Report	
Displaying 3 of 4 respondents	
Response Type: Normal Response	Collector: paralegal salary survey (Web Link)
Custom Value: empty	IP Address: 98.247.242.136
Response Started: Sun, 12/28/08 11:17:51 AM	Response Modified: Sun, 12/28/08 11:20:18 AM
<p>1. What is the ratio of criminal defense lawyers to paralegals in your firm (i.e., how many lawyers compared to how many paralegals)?</p> <p>2 to 1</p>	
<p>2. What is the salary range for paralegals working with criminal defense lawyers in your firm? Answer may be annual salary or hourly salary. (Please include salary only, excluding any other benefits and compensation.)</p> <p>D.O.E.- around \$20/hr.</p>	
<p>3. What is the approximate average salary of paralegals working with criminal defense lawyers in your firm? (Again, answer can be annual salary or hourly salary.)</p> <p>D.O.E.- around \$20/hr.</p>	

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APPENDIX R

survey title: paralegal salary survey for OPD	
current report: Default Report	
Displaying 2 of 4 respondents	
Response Type: Normal Response	Collector: paralegal salary survey (Web Link)
Custom Value: empty	IP Address: 32.155.224.51
Response Started: Wed, 12/24/08 8:04:56 AM	Response Modified: Wed, 12/24/08 8:08:32 AM
<p>1. What is the ratio of criminal defense lawyers to paralegals in your firm (i.e., how many lawyers compared to how many paralegals)?</p> <p>3:1 at present.</p>	
<p>2. What is the salary range for paralegals working with criminal defense lawyers in your firm? Answer may be annual salary or hourly salary. (Please include salary only, excluding any other benefits and compensation.)</p> <p>\$42,000 -- \$60,000</p>	
<p>3. What is the approximate average salary of paralegals working with criminal defense lawyers in your firm? (Again, answer can be annual salary or hourly salary.)</p> <p>\$60,000</p>	

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http://www.surveymonkey.com/MySurvey_ResponsesDetail.aspx?sm=fngbT%2bIMT7Npg... 1/2/2009

APPENDIX R

survey title: paralegal salary survey for OPD	
current report: Default Report	
Displaying 1 of 4 respondents	
Response Type: Normal Response	Collector: paralegal salary survey (Web Link)
Custom Value: empty	IP Address: 71.112.90.88
Response Started: Tue, 12/23/08 10:59:23 PM	Response Modified: Tue, 12/23/08 11:02:51 PM
1. What is the ratio of criminal defense lawyers to paralegals in your firm (i.e., how many lawyers compared to how many paralegals)? 1:1	
2. What is the salary range for paralegals working with criminal defense lawyers in your firm? Answer may be annual salary or hourly salary. (Please include salary only, excluding any other benefits and compensation.) \$20 to \$40 per hour	
3. What is the approximate average salary of paralegals working with criminal defense lawyers in your firm? (Again, answer can be annual salary or hourly salary.) \$48,000 per year	

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APPENDIX S

**Associated Counsel for
the Accused**

**Northwest Defender
Association**

**Society of Counsel
Representing
Accused Persons**

**The Defender
Association**

David Hocraffer
Office of Public Defense
123 Walthew building
4th Floor
Seattle, WA 98104

January 5, 2009

RE: Defense proposal for felony case weighting and Expedited Felony cases

Dear David,

Below is the joint proposal that you asked the four public defender agencies to develop. It includes both a 'case weighting' pilot for felony cases and calendar staffing for expedited misdemeanor cases.

CASE WEIGHTING PILOT

This pilot will give the Office of Public Defense ("OPD") and the agencies an opportunity to explore whether case weighting is an adequate payment methodology that results in a reasonable workload, cost efficient use of King County resources and effective representation. Our proposal ensures skilled and experienced defenders will continue to do this work, saving the county the cost of assigned counsel in difficult cases, if the agency is unable to staff these cases.

The credit system which has been in effect the past 30 years, assumes an average of 12.1 hours of attorney work per felony case and 150 felony case credits per full time felony attorney. Under OPD's funding model, the credit includes an average of 12.1 hours of attorney hours, 7.0 hours of paraprofessional work (social work, investigation or paralegal) and 3.5 hours of clerical work (receptionist, transcription, conflicts check, docketing, etc). The 150 case load assumes a mix of both simpler and more challenging felony cases.

APPENDIX S

The 150 felony caseload no longer includes this mix because the King County Prosecutor in October 2008 began filing most felony drug cases as misdemeanors, leaving a significantly higher proportion of the most serious cases in the caseload mix. In 2006 -2008, approximately 40% of all felony cases filed were drug cases, or almost 65 of the felony attorney's 150 assigned cases. In the last 3 months of 2008, felony drug filings dropped to less than 20% of all felony filings, as a result of the changes in the prosecutor's filing decisions. Now an attorney can expect to represent clients in only 30 drug cases, leaving 120 more serious cases. This is a dramatically more demanding caseload than the previous 95 serious cases and 65 drug cases. Far fewer cases will be resolved in 12.1 attorney hours or less. Even before this change we have noted the increased difficulty caused by the large numbers of mentally ill clients charged with felonies and the "growth" of the felony plea form from 4 pages to more than 15 pages

To address the need for increased attorney time in felony cases we propose:

- All murder cases-15 credits
- Indeterminate sex cases-10 credits
- Cases with mandatory minimum 20 years (Arson 1; Kidnapping 1)-10 credits.

If a case exceeds 220 hours of attorney time cases would presumptively receive 3 additional credits for every 50 attorney hours over 200 attorney hours worked.

All other felony cases would be given 1 credit. These cases would presumptively receive 3 credits for every 50 hours of attorney time above the original, assumed 12.1 hours of attorney time. (This is less than the 4.1 credits that would normally equal 50 hours of attorney time.)

Almost all felony cases will fall into this framework. There will be a very small group of cases that requires attorney(s) or portions thereof to be entirely dedicated to the case in order to complete it efficiently and without compromising the client's interests. While these cases are rare, they do occur and need to be recognized

EXPEDITED CASES

We are willing to accept OPD's proposed "calendar" funding for these cases if:

- Each calendar position has an annual caseload of 450 expedited cases. For the five month contract extension this would be 180 cases per calendar position. Reviews will continue to be treated as they are under the 2008 contract.
- Should a calendar attorney exceed the caseload, funding for additional attorney resources will be increased proportionately.

APPENDIX S

The 450 caseload cap is appropriate for several reasons – calendar attorneys will be handling arraignments, which is a new and extra duty; agencies will be required to have an attorney at assigned calendars regardless of the number of cases that are scheduled; expedited cases may require more time than the 4.1 hours allotted to a misdemeanor under our current misdemeanor credit funding model, the attorney will need to be knowledgeable in felony as well as misdemeanor sentencing and in calculating offender scores under the SRA; collateral consequences to immigration status are almost equally significant in both the felony and misdemeanor case areas; clients will be more challenging and sophisticated than clients who previously had cases filed as expedited matters. We note that in recognition of this the Prosecuting Attorney has assigned a Senior Deputy Prosecuting Attorney to negotiate expedited cases. The same level of experience and skill is necessary on the defense side.

The 450 expedited caseload allows the agencies to staff calendars in a predictable and efficient manner, allowing for the most cost effective processing and resolution of these types of cases.

We believe our proposal is a cost-effective and reasonable way to handle these felony and expedited felony cases. We look forward to discussing the above with you in more detail and welcome your questions about our proposal.

Sincerely,

Don Madsen
ACA

Eileen Farley
NDA

Anne Daly
SCRAP

Floris Mikkelsen
TDA

Cc: Jackie MacLean, Director, DCHS
Mary Jane Ferguson, OPD
Russ Goedde, OPD
Krishna Duggirala, OPD
Marty Lindley, DCHS
Tessa Forbes, Budget Office
Krista Camenzind, Budget office



King County

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 17, 2009

Ordinance

Proposed No. 2009-0176.1

Sponsors Gossett

1 AN ORDINANCE making a supplemental appropriation of
2 \$18,601,096 to the office of the public defender; to enter
3 into contracts for indigent defense services with four
4 defender agencies to begin July 1, 2009, implementing
5 recommended changes to the public defense funding
6 model; amending the 2009 Budget Ordinance, Ordinance
7 16312, Section 49, as amended.
8

9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. There is hereby approved and adopted an ordinance making a
11 supplemental appropriation of \$18,601,096 to the office of the public defender
12 appropriation unit of the general fund, contracts for indigent defense services with four
13 defender agencies to begin July 1, 2009, implementing recommended changes to the
14 public defense funding model.

15 SECTION 2. Ordinance 16312, Section 49, as amended, is hereby amended by
16 adding thereto and inserting therein the following:



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 17, 2009

Motion

Proposed No. 2009-0177.1

Sponsors Gossett

1 A MOTION amending the public defense payment model,
2 which established a framework for budgeting indigent legal
3 defense services in King County.
4

5 WHEREAS, the King County council included a proviso within the office of the
6 public defender's section of Ordinance 16312, the 2009 Budget Ordinance, and

7 WHEREAS, the proviso required a report to be developed by the department of
8 community and human services, in conjunction with the office of management and
9 budget to include current data and input from the contract defense contractors and the
10 King County Bar Association, and

11 WHEREAS, these components shall be consistent with the model adopted by the
12 council in Motion 12160, and

13 WHEREAS, the Public Defense Payment Model is the analytical framework for
14 calculating the costs to provide indigent defense services in order to guide preparation of
15 proposed annual appropriations for public defense and to structure contracts for indigent
16 defense services, and

Motion

17 WHEREAS, the Public Defense Payment Model is not intended to and does not in
18 any way alter the relationship between King County and the nonprofit law firms with
19 which King County contracts, namely that the law firms are independent contractors to
20 King County, and

21 WHEREAS, the model must be updated after three years (2006 was Year 1; 2007
22 was Year 2; and 2008 was Year 3), the model policies have been updated for the
23 Ordinance 16312 proviso report, revised for the 2009 budget, and revised in Attachment
24 A to this motion, and

25 WHEREAS, the King County council finds that the department of community and
26 human services's, in conjunction with the office of management and budget, report
27 regarding proposed recommendations to the contract payment methodology and budget
28 modification is approved;

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

30 The council hereby adopts the amendment to the Public Defense Payment Model

31

Motion

32 policies set out in Attachment A to this motion and effective July 1, 2009, for contract
33 development and payment.
34

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

ATTEST:

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

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

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

STEP 1: Project the Annual Caseload Credit Volume

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

<u>Case Area</u>	<u>Caseload Standard</u>
• Complex felony (e.g. death penalty, homicide cases)	150 credits
• Regular felony	150 credits
• King County misdemeanor	450 credits
• Juvenile	330 credits
• Dependency	180 credits
• Contempt of court	225 credits

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

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

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

A. Salaries

1. **Attorney Salary**: The model budgets public defender attorney salaries at parity with similarly situated attorneys (where positions budgeted in the model are in comparable classifications with comparable duties and responsibilities) in the Office of the Prosecuting Attorney. For the purposes of the model, salary means

pay exclusive of benefits. Alignment of Public defender attorney to Prosecuting Attorneys will be done annual based on January PAO attorney levels.

$$\frac{(\text{Weighted Average Attorney Salary})}{\text{Caseload Standard}} = \text{Attorney Salary Price Per Credit}$$

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

$$\frac{(\text{Weighted Average Supervisor Salary}) \times 0.1}{\text{Caseload Standard}} = \text{Supervisor Salary Price Per Credit}$$

3. **Non-Legal Professional Support Staff Salaries:** The model funds the contract requirement of each defender agency to provide sufficient professional support staff (social worker, investigator and paralegal) for each attorney. The non-legal support staff salary price per credit is based on the average market rate for paralegals, investigators and social workers taking into account the percentage distribution of FTEs in the three non-legal staff categories in the 2008 system. The model payment standard is 0.5 professional support staff per attorney with an annual COLA increase.

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

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

$$\frac{(\text{Clerical Staff Salary}) \times 0.2}{\text{Caseload Standard}} = \text{Clerical Salary Price Per Credit}$$

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

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

C. Benefits: The model budgets for benefits based on the 2003 benefit amount per agency FTE inflated annually at the rate of inflation experienced by the county flex benefit plan. The model does not prescribe the type of benefits contract agencies provide to their employees.

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

$$(\text{2008 benefit amount per FTE}) \times (\text{2009 projected inflation rate}) = \text{2009 Benefit Allocation Per FTE}$$

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

$$\frac{(\text{Benefit Allocation per FTE}) \times (1.80^A)}{\text{Caseload Standard}} = \text{Benefit Price Per Credit}$$

^A 1.80 = 1 attorney; 0.1 supervisor; 0.5 non-legal staff; and 0.2 clerical staff.

Caseload Standard

D. Direct Overhead Allocation Related to the Practice of Law

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

$$A. \text{ Legal Staff Allocation} = \frac{\text{Legal Admin Rate per Attorney}}{\text{Number of Attorneys}}$$

$$B. \text{ Legal Admin Rate per Attorney} = \frac{\text{Legal Admin Rate Price per Credit}}{\text{Caseload Standard}}$$

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

$$A. \text{ Non-Legal Staff Admin Allocation} = \frac{\text{Non-Legal Staff Admin Rate per FTE}}{\text{Number of Non-Legal FTEs}}$$

$$B. \text{ Non-Legal Staff Admin Rate per FTE} = \frac{\text{Non-Legal Admin Rate Price per Credit}}{\text{Caseload Standard}}$$

STEP 3. Calculate the Total Price Per Credit

A separate price per credit is calculated for each case area taking into account differing attorney levels assigned to each case area.

$$\text{Salaries (A1+A2+A3+A4) + FICA (B) + Benefits (C) + Legal and Non-Legal Staff Administrative (D1B + D2B) = Total Price Per Credit}$$

STEP 4. Indirect Administrative and Overhead Allocations

For indirect administrative/overhead costs including office operations, capital equipment purchases and leases and other agency-related costs and for agency administration, the model uses a percentage rate which is to be derived from the 2008 rate of administrative/overhead costs to total direct expenditures (caseload and calendar related salaries, benefits, FICA, and legal-related administrative expenses). Adjustments may be made to the rate to accommodate for business process changes which may occur from time to time. Each contract agency will be allocated a percentage share of the total allocation based upon the agency's share of the total system direct costs.

$$(\text{Total direct expenditures}) \times \% \text{ Rate} = \text{Total Indirect Admin/Overhead Allocation}$$

STEP 5. Rent Allocation:

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

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

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

1. Assign each personnel category above in A1-4 an appropriate square footage allocation not to exceed the Executive's 2004 proposed county space standards.
2. Multiply the FTE in each category by the square foot allotment;
3. Apply an allocation for special spaces such as storage, lunch rooms, and conference rooms; and
4. Calculate the circulation allowance for commons areas, restrooms and hallways not to exceed current county policy of 0.25 percent as follows: $(B2 + B3) \times 0.25$.

$$(B2 + B3 + B4) = \text{Total Square Footage}$$

C. Calculate the total rent allocation:

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

$$(\text{Average Cost Per Square Foot}) \times (\text{Total Square Footage}) = \text{Total Rent Allocation}$$

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

STEP 6: Calendar Attorney and Staff Allocation

- A. Compile the list of court calendars to be assigned to each attorney.
- B. Calculate the costs for salaries, FICA and benefits for attorneys, supervisors and non-legal staff assigned to calendar duty as follows:

1. Number of Attorney FTEs x Attorney Salary per FTE = Total Attorney Cost
2. Number of Supervisor attorneys x Supervisor Salary per FTE = Total Supervisor Cost
3. Number of Staff FTEs x Non-Legal Support Staff Salary per FTE = Total Non-Legal Staff Cost
4. $(\text{Total Attorney Cost} + \text{Total Non-Legal Staff Cost}) \times .0765 = \text{FICA Cost}$
5. $(\text{Total Attorney and Non-Legal Staff FTEs}) \times (\text{Per FTE Benefit Allocation}) = \text{Benefit Cost}$
6. Compute administrative and overhead costs using the rate in Step 4.

- B. Calculate the total cost for calendar attorneys and staff as follows:

$$(A1) + (A2) + (A3) + (A4) + (A5) + (A6) = \text{Total Calendar Allocation}$$

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

March 2, 2009

The Honorable Dow Constantine
Chair, King County Council
Room 1200
COURTHOUSE

Dear Councilmember Constantine:

As required by a proviso contained within the 2009 Adopted Budget, Ordinance 16312, enclosed is a report describing the budget model used by the Department of Community and Human Services (DCHS), Office of the Public Defender (OPD) to develop the 2009 Executive Proposed Budget, a motion to approve the budget methodology discussed, recommendations for addressing public defense contractor issues related to the Public Defense Payment Model and their contracts with King County, and a supplemental request for funding for the second half of 2009.

Section 49, P2 of the 2009 Adopted Budget states:

Of this appropriation, \$1,000,000 shall not be expended or encumbered until the council receives and approves by motion the components and justification for each component that will be used to develop the indigent defense contracts between King County and the nonprofit defense corporations. These components shall be consistent with the Model adopted by the council in Motion 12160. The report shall be developed by the department of community and human services, in conjunction with the office of management and budget, and shall include current data and input from the contract defense contractors and the King County Bar Association. The data shall include, but not be limited to, information on caseload, staffing and calendaring of cases for felony, complex felony, juvenile, misdemeanor, involuntary treatment, persistent offender and dependency cases. The report shall be submitted no later than February 1, 2009, to ensure council approval of the proposed methodology prior to negotiation of the new contracts between the county and the contract defense firms. It is the intent of the council that the office of public defense shall work collaboratively with the nonprofit defense corporations and the King County Bar Association to complete the report and transmit it to the council as soon as possible.

A similar proviso in Section 16 places a \$100,000 expenditure restriction in the 2009 budget for the Office of Management and Budget (OMB).

Ordinance 16312, Section 49, P1 provides for an extension of the 2008 contracts for legal representation of indigent persons between the OPD and its four contract agencies: Associated Counsel for the Accused (ACA), Northwest Defenders Association (NDA), Society of Counsel Representing Accused Persons (SCRAP) and The Defender Association (TDA).

Section 49, P1:

Of this appropriation, funding for contracts between the office of public defense and the public defense nonprofit corporations that provide indigent defense services for King County shall be expended solely on contracts that ensure that expedited gross misdemeanor cases resulting from the prosecuting attorney's filing and disposition standards ("FADS") continue to be reimbursed using the existing case credit, and not calendar-basis, reimbursement methods and shall also ensure that clerical staffing levels are reimbursed at the levels generated by the 2008 model, until the council approves by motion an updated methodology for reimbursement consistent with the intent of Motion 12160. It is the intent of the council that the office of public defense shall work collaboratively with the nonprofit defense corporations and the King County Bar Association to update the reimbursement methodology as soon as possible. Further, it is the intent of the council that new contracts for indigent defense to cover the period July 1, 2009, through June 30, 2010, be negotiated by the office of public defense and the public defense nonprofit corporations and submitted to the council by March 31, 2009, for approval. These contracts shall be developed in accordance with the model adopted by the council in Motion 12160 and shall be developed with regularly updated information and input from the contract defense agencies regarding caseload, staffing and calendaring of cases for felony, complex felony, juvenile, misdemeanant, involuntary treatment, persistent offender and dependency cases, as well as review and input by the King County Bar Association.

The 2009 Adopted Budget appropriated six months of funding for the provision of defense services. The contractors agreed to the terms of an amendment to their 2008 contract with OPD for January through May 2009.

The attached report and its recommendations continue King County's 34-year commitment to providing a non-profit based system for public defense services. Throughout this time, the OPD has sought to standardize the funding basis and the quality of defense services, allowing independence of the contractors to manage their business while also providing a clear and equitable basis for budgeting. Per council request, the DCHS and OMB worked collaboratively with the contractors and the King County Bar Association to complete the enclosed report.

Contracting and Funding Model Background

The King County public defense contracts define the non profit law firms as independent contractors, per the definition in Washington State case law. It is the intent of the county that the firms are fully independent contractors, and the county has retained all legal rights to monitor them and set contract requirements. At all times, the county remains fundamentally liable to all clients to provide legal services mandated under the U.S. and Washington State Constitutions and other laws.

For many years prior to 2006, the annual OPD budget was constructed using staffing and administrative budget information provided by the agencies. In general terms, the OPD budget was a compilation of agency budgets adjusted for changes in caseload type and caseload distribution (the spread of any given caseload area among the agencies). Construction of the budgets included items that applied to all agencies as a group (such as a cap on administrative percentages) and items that applied to specific agencies on a case by case basis (such as whether or not the county would approve payment for a particular office space lease or budget for the addition of an administrative staff position). Historically, claims were made by agencies that the county did not wield this type of budgetary discretion uniformly. The combination of individual agency budgeting decisions and county administrative discretion, agency by agency, resulted in county costs per case that were different for each agency, despite the fact that the work (for any given case area) and standards of performance were the same.

Two significant safeguards established in 1988 enable the continued provision of effective assistance of counsel while overcoming the lack of uniformity in previous practice: 1) the Kenny salary plan was adopted to ensure that defender attorney job descriptions and salaries remain at parity with prosecutor salaries from year to year; and 2) caseload standards were promulgated to ensure that defender attorneys do not become overloaded with case assignments. These safeguards are as integral to the Model as they were to the historic budgeting practices.

Overview of Current Budget and Funding Model

In 2005, King County Council Motion 12160 adopted the Public Defense Payment Model, which has been used since 2006 to prepare the annual budget and structure the payment amounts in the defender agency contracts. The Model includes three basic components. First, a uniform price per credit is calculated for each caseload area (this includes salary and benefit costs and direct overhead and mileage costs for all staff working directly on cases). Second, administrative/indirect overhead allocation rates are calculated to cover salary and benefit costs for administrative personnel (management positions/non-direct case positions such as receptionists) and general office operations costs, excluding rent. Third, a rent allocation is calculated based on the number, location and function of full time equivalent (FTE) staff.

Annual budget development begins with the projection of annual caseload for each case area; an adjustment for cost of living allowance (COLA) for attorneys, staff and specific administration/overhead categories; and an adjustment to bring defense attorney salaries into

parity with King County Prosecuting Attorneys. This information is entered into the Model and results in an estimated budget for each case area and for contractor administration and overhead system wide.

Each contract is structured to identify the number of case credits anticipated to be performed in each assigned case area by each contractor. The Model is used to calculate the amount to be paid to each contractor for each case area and for administration/overhead, which is identified separately in the contract. The rates paid per unit of work in each case area and per FTE for administration/overhead are uniform among all contractors. It is important to note that the county uses the Model to calculate the total amount of each contract, but neither the Model nor the contract controls or directs the contractors in how they spend that amount. The contract deliverable is the provision of public defense and the contractors determine how they provide the service.

Motion 12160 expressed the council's intent that the Public Defense Payment Model would be updated every three years, stating "the model shall be updated and revised as needed for the 2009 budget." The 2009 Executive Proposed Budget included an updated version of the Model. Adjustments to the Model included updating the overhead rate charge and rent rates, correcting formula errors, reducing reimbursement for paralegal training, reducing the ratio of clerical staff from 0.25 FTE per attorney to 0.10 FTE per attorney, and re-setting the attorney seniority levels on parity with the PAO. The 2009 Executive Proposed Budget also included reductions driven by the projected 8 percent decrease in felony and misdemeanor filings, along with the anticipated impact of the Prosecuting Attorney's changes to the Filing and Disposition Standards that called for low level property and drug crimes to be filed as Expedited felonies, which were anticipated to be handled on a calendar basis.

Report Preparation Process

To gather input from stakeholders, DCHS established a schedule of two-hour bi-weekly meetings with contractor directors and deputy directors, beginning on December 22, 2008 and concluding January 15, 2009. At the first meeting, the contractors brainstormed a list of issues for discussion related to the Model and contract. The issues were discussed in subsequent meetings and are summarized in the report.

The King County Bar Association (KCBA) received drafts of this report, as well as a presentation to its board by OPD and the contractors. The KCBA informed OPD that it was forming an ad hoc committee to review the issues presented and indicated that the KCBA intended to submit any written comments directly to the King County Council. Drafts of the report were sent to all participants for review and comment before the final version was produced.

This process was a huge commitment of work and time on behalf of both county and agency staff and the collaborative, open and rigorous discussions are a credit to all involved. Recommendations for issues raised in the meetings, including cost comparisons with the 2009

Executive Proposed Budget, are provided in detail in the report. A summary of key issues follows.

Issue Recommendations with Significant Cost Components

Please note that dollar amounts are annual; the 2009 impact for each is half the amount provided.

1. Clerical staffing levels

The 2009 Executive Proposed Budget assumed a clerical staffing ratio of 0.10, or one clerical staff position for every ten attorneys. The report recommends setting a clerical ratio of 0.20 per attorney, at an increased cost of \$459,810 over the 2009 Executive Proposed Budget. The actual contractor average ratio is 0.18 and the 2008 Model was set at 0.25 clerical staff per attorney.

2. Expedited felony calendar

The report recommends a doubling of the funding for Expedited felony calendars from the 2009 Executive Proposed Budget. Each contractor should be funded for 1.0 FTE attorney, 0.50 professional support staff, and 0.10 supervisory staff, including indirect and direct contractor overhead starting July 1, 2009, but only if the court is consistently scheduling eight or nine weekly Expedited felony calendars. If fewer calendars are regularly scheduled, a scaled approach to calendar contracting would be implemented, providing two FTE attorneys per scheduled calendar, which still doubles the staffing provided for in the 2009 Executive Proposed Budget. Increasing the number of attorneys staffing the calendars will provide the defense attorneys with additional time to meet with clients out of court.

Doubling the staffing for Expedited felony calendars will cost \$486,561 more than the 2009 Executive Proposed Budget. If District Court schedules fewer than nine calendars, the cost would be less.

3. Attorney salary parity realignment and attorney salary levels beyond the current public defender scale (the addition of Senior IV and V levels)

The report recommends including Prosecuting Attorney Office (PAO) attorney levels Senior IV and V for the purpose of maintaining parity with the PAO. Previously, only Senior attorney levels I through III were used to define the range of salaries. Because PAO Senior levels IV and V handle cases, it is appropriate to include them in calculating parity. The second part of this recommendation is to use the PAO's January Payroll Reconciliation file to establish the percentage of attorneys in each class and the average salaries of attorneys. The 2009 Executive Proposed Budget used July 2008 actuals for the purpose of parity. Updating to the January 2009 file includes updating COLA and merit increases, as well as capturing promotions within the PAO. The combined cost of

including Senior IVs and Vs and using the January Payroll Reconciliation file is \$1,529,402 over the 2009 Executive Proposed Budget. Approximately 10 percent of this cost increase is attributable to the addition of Senior IVs and Vs; the balance is attributable to increased salaries and promotions at the PAO as of January 2009, compared to July 2008.

4. Partial funding of FTEs

The report recommends that caseload projections in each contract case area be rounded up or down so that no partial FTEs are created. This will allow each contractor to start the contract year with only full FTE attorneys funded. The result of the recommendation is to increase the number of attorneys system wide by 1.17 FTEs at a cost of \$207,000 over the 2009 Executive Proposed Budget. Previously, partial FTEs were allowed in the model.

5. Professional staff salary review (social worker, investigator, paralegal)

The 2009 Executive Proposed Budget used a 2005 survey of comparable public market salaries inflated over time by COLA to determine the professional staff salary component of the Model. The report recommends using the current Model compensation level based on a 2008 survey of the comparable public market, consistent with the 2005 Model methodology, for a reduction of \$1,209 from the 2009 Executive Proposed Budget. The Model does not include merit increases for non-attorney staff.

6. Benefits

The report recommends re-setting the benefit rate to 2008 actual costs to determine the weighted average, with annual adjustments by the King County benefits inflation rate for the next three years of the Model. The 2009 Executive Proposed Budget was based on 2007 actuals. After three years, the base would be recalibrated based on actual benefit costs. The result of the recommendation is a \$215,424 system-wide increase from the 2009 Executive Proposed Budget.

7. Rent

The Model used to develop the 2009 Executive Proposed Budget used a three year rolling average to determine a square foot rental rate, which was then multiplied by total square footage, which is driven by caseload. In addition, the space allocation per FTE was adjusted to match the adopted King County space standards. As a result of this formula, the drop in caseload in 2009 due to a projected decrease in filing and the PAO's change to the filing standards resulted in a sizeable decrease in the amount for rent in the Model and the 2009 Executive Proposed Budget. To smooth out rent adjustments in the Model, the report recommends using a three-year average of actual caseload (2006, 2007, and 2008) and applying it annually to an updated three-year rolling average rent rate. The

cost of this option as compared to the 2009 Executive Proposed Budget is an additional \$170,990.

Issues Recommended for Continuing Collaborative OPD and Contractor Effort

1. July 1, 2009 expected electronic filing changes by the Department of Judicial Administration

The report recommends no changes be made in the Model to account for this new process, but that OPD monitor the process for problems and assist with troubleshooting as it is put into practice.

2. Case weighting of general felony caseload

Although cases are broken out in the Model by general case type (e.g. felony, misdemeanor, etc.), within each general case type are cases of varying levels of complexity. Attorney caseloads are "averaged" with a few serious cases averaged by a mix of less serious cases. There is concern that the current system of crediting cases does not accurately or uniformly provide similar credits for cases of similar levels of complexity across the entire system, and further, may impose too heavy a workload on felony attorneys. This issue has been exacerbated as many of the simplest levels of cases are now siphoned off by the PAO's revised Filing and Disposition standards via Expedited felony case procedures. This leaves a higher concentration of more serious felony cases for felony attorneys to handle, without any modification of the case credit load per attorney within the Model.

The report recommends immediately establishing a workgroup of criminal justice system stakeholders to more fully address and follow-through on the impacts of the filing standard changes. OPD will conduct a review of affected case types to determine the weighting dynamic, historic reference and future trends, and anticipated financial adjustment, if any, to the overall OPD budget. Critical to this analysis is gathering contractor closed case data regarding attorney and support staff hours within given case types.

The discussion also may include any interim adjustments that can be made to the credit based system while analysis of case trends and budget implications is completed. The analysis is meant to establish an approach for determining case credit distribution within annual system total budgeted case credits. The discussion may result in an adjustment to extraordinary case credit application guidelines.

3. Process for reviewing issues that impact work and funding mid-contract

The report recommends that OPD continue structured monthly contract agency director meetings to discuss county defense services system topics.

4. Information Technology (IT)/King County network issues

The report recommends renewing efforts to complete the transition of the contractors off the county Wide Area Network (WAN) by reassessing county IT concerns and financial impacts, and reinstating an IT workgroup to complete a detailed recommendation.

Attached to this letter are three pieces of legislation for council consideration:

1. A motion to approve the report recommendations and the components and justification for each component that will be used to develop the indigent defense contracts between King County and the nonprofit defense corporations. Council's approval of this motion will release the \$1,000,000 restricted by proviso in OPD's budget and the \$100,000 restricted by proviso in OMB's budget. The release of the \$1,000,000 will enable OPD to extend the current defense contracts through June 30, 2009.
2. A motion to amend the Public Defense Payment Model consistent with the recommendations of this report.
3. A supplemental budget request totaling \$18,601,096. This is the amount required to implement all of the recommendations in the report and to fund OPD staff, assigned counsel, and expert witnesses for the period July 1 through December 31, 2009. If council makes changes to the recommendations in the report, the amount of the supplemental will need to be adjusted commensurately.

Approval of this supplemental is required before OPD can enter into contracts with the defender agencies. OPD cannot encumber funds by contract for which it does not have appropriation authority. After the supplemental has been approved, it will take approximately forty-five days to develop, negotiate, and prepare the new contracts for transmittal. Per council direction, the new contracts will cover the period July 1, 2009 through June 30, 2010; however, the funding for the second half of the contract will be contingent on future funding as defined in the 2010 Adopted Budget.

The requested supplemental of \$18,601,096 exceeds the \$16,217,631 council placed in the Public Defense Reserve in the 2009 Adopted General Fund Financial Plan by \$2,383,465. This amount will be deducted from the mitigation reserve.

The substantial increase of OPD's 2009 budget places significant upward pressure on the out-year deficits facing the General Fund. While the mitigation reserve is sufficient to cover 2009 costs of implementing the report recommendations, there is no similar reserve to accommodate the increases in 2010 and beyond.

Beyond the increases due to the report recommendations, there are two outstanding issues that could require additional supplemental requests for OPD in 2009:

Truancy: The January 2009 *Bellevue School District vs E.S* by the Washington State Court of Appeals requires defense attorneys be provided to juveniles at the time of the first hearing of their truancy case. Prior to the *Bellevue vs. E.S.* decision, defense was provided at the contempt stage. In 2008, there were approximately 2500 truancy filings, of which approximately 700 cases went to contempt. The PAO, OPD, and Superior Court have been working with school districts to implement post-filing diversion programs that attempt to resolve truancy issues outside of the court. The post-filing diversion program is intended to minimize the number of truancy cases that are heard in the court and therefore the cost to provide defense attorneys prior to the contempt stage. Nonetheless, the potential cost to the county of this ruling is significant. Once the post-filing diversion programs are in place and OPD and the court have a better sense of how many cases will require defense, additional funds will be requested. Because the issues addressed in the ruling are of a constitutional nature, even if the case is appealed, its direction cannot be stayed during appeal.

Caseload: The 2009 Executive Proposed Budget and the proviso report assume an 8 percent decline in felonies and misdemeanors in 2009 as compared to 2008. If this projection proves inaccurate, then additional funding would be required. For example, the PAO has a current backlog of misdemeanor cases that was not accounted for in the caseload projection. While the 2009 Executive Proposed Budget and the proviso report include a \$1 million increase for complex cases, if there are more aggravated murders in 2009 than projected, additional funding will be required. OPD exercises no control over caseload and must assign counsel to all cases with indigent defendants that are filed by the PAO.

The county appreciates the hard work and commitment that the four contract agencies and their Boards of Directors have dedicated to the effort to identify and discuss the key issues addressed in the report. Discussions were open, honest, and respectful. The report represents areas of negotiated agreement and identifies areas for continued work. All parties are committed to continued open and frequent communication, working to solve the outstanding issues already identified and the issues that may arise during the course of this and the subsequent contract periods. We are united in our belief that the King County public defense contract policies and funding are among the most progressive in the nation.

The Honorable Dow Constantine
March 2, 2009
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If you have any questions, or need additional information, please feel free to contact Jackie MacLean, Director of the Department of Community and Human Services, at 206-263-9100, or V. David Hocraffer, The Public Defender, at 206-296-7641.

Sincerely,

Ron Sims
King County Executive

Enclosures

cc: King County Councilmembers

ATTN: Tom Bristow, Interim Chief of Staff
Saroja Reddy, Policy Staff Director
Anne Noris, Clerk of the Council
Frank Abe, Communications Director

Anne Daly, Director, Society as Counsel Representing Accused Persons

Eileen Farley, Director, Northwest Defenders Association

Don Madsen, Director, Associated Counsel for the Accused

Floris Mikkelsen, Director, The Defender Association

Jackie MacLean, Director, Department of Community and Human Services (DCHS)

V. David Hocraffer, The Public Defender, Office of the Public Defender, DCHS

Bob Cowan, Director, Office of Management and Budget (OMB)

Krista Camenzind, Budget Supervisor, OMB

