

**Superior Court of the State of Washington
for the County of King**

JAMES E. ROGERS
Presiding Judge

King County Courthouse
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May 6, 2021

Dwight Dively
Budget Director, King County Executive

King County Councilmember Jeanne Kohl-Welles
Chair, Budget and Fiscal Management Committee

Re: Summary of King County Superior Court's COVID-8
Budget Request

Dear Mr. Dively and Councilmember Kohl-Welles,

This letter is a short explanation of Superior Court's COVID 8 budget request. The supporting Department of Judicial Administration's (Clerk's Office) request is coming by separate cover. Please note that while our reduction plan is over three years, this budget request is only for the current 2021-2022 biennium. Additional information is included which estimates costs beyond the current biennium, as we thought it important that you see our entire plan up front. We recognize that we will need to evaluate our progress prior to submitting a budget request for costs in the next biennium, and that this funding is temporary and we must plan for after it ends.

Our request for 2021-2 is \$17,604,934, plus DJA's request
Our total three year request is 34,098,181, plus DJA's request

The Current Situation in King County Superior Court and The Rationale
Behind this Budget Request

King County Superior Court is a national leader in creating greater access to justice through virtual technology. In addition to thousands of hearings, we held over 600 trials from July 2020 to March 2021, including over 120 jury trials, while many courts across the country, even in the County, remained closed. Despite this great progress, the pandemic resulted in

complete trial shutdown of the Criminal Department twice, for a combined period of over nine months. While the Court mostly shut down except for emergency functions in March 2020, thanks to our radical change in business practices starting in July, we were able to continue to hold dependency, family law and civil trials, including civil jury trials, during and beyond the November 2020 coronavirus wave. (Criminal jury trials are in person; others can be held remotely.)

The result of this closure is that the Criminal Department has a large backlog¹ of thousands of criminal trials with charges such as homicide, sexual assault and assaults with a weapon. With our current trial court capacity, these old, serious cases will choke access to justice for years for defendants waiting in custody and to multiple other Court Departments. The Superior Court is faced with deciding which denial of access to justice is the lesser of two evils: having defendants wait years in custody for trial as we continue business as usual, or gut the Court's Civil and Family Law Departments to try only criminal cases for three years, thereby limiting access for those who seek justice for discrimination, personal injury or child custody. We believe that the solution is a third way: temporarily increase trial capacity.

We face a second, serious challenge across our entire organization, one that greatly impacts access to justice for litigants and lawyers. We are proud that we greatly increased access with new technology, redefined the word "court," and created corresponding new business practices.² We have been in a state of rapid and constant change, assessment and refinement now for over a year, in fact, we have forced a rate of change that few organizations ever experience.

But we are seeing the organizational effects of "building the plane while flying it." Lawyers and litigants rely upon judicial leaders and court employees to explain and to follow consistent practices and procedures. This is the very essence of procedural justice. But court practices, which have rapidly changed, can vary from court to court, depending on the knowledge and training of our employees, many of whom have not been able to keep current.

¹A note on terminology. "Backlog" has different meanings. In Prosecutor and Public Defense parlance, it means unfiled cases. Our Superior Court budget is based only upon filed, pending violent and sex cases/trials. Our goal, pure and simple, is to expand capacity for these cases. It is important to give resources to the lawyers in the CJ system to address unfiled cases.

² "During the pandemic, the King County Superior Court has conducted more virtual trials than any other court system in the country ..."
<https://www.law360.com/trials/articles/1379757/demystifying-the-virtual-civil-jury-trial-experience>

Litigants can be confused, hearings can take longer, and some judicial officers can no longer be assigned to all subject areas, per our practice. Also, our IT Department infrastructure cannot handle the work it has built for itself and for the public. None of this is to denigrate many brilliant and hardworking employees who are capably doing work.

We have high confidence that we can address these issues, with the proper resources and in the three-year period. Much of the standardization work we will absorb, but we are making a specific request for temporary trainers. We have a plan for a permanent virtual training and standardization solution through reform of our currently problematic SharePoint intranet site. We are confident in success for several reasons. King County Superior Court already has a culture of constant system improvement, through a tradition of management judges and experienced employees including administrative directors and managers and bailiffs. This is why we were able to rapidly innovate when others were not.

In addition, this budget request is based partially on information gained from an ongoing grant-funded study of our new processes and the advice of our nationally respected, grant-funded court consultant, Dr. Brenda J. Wagenknecht-Ivey, CEO of Praxis Consulting. Our Court received a grant in 2020 from the State Justice Institute (SJI) to document the practices that they expected we would only temporarily adopt out of necessity during the pandemic. No one contemplated that we would strive to make our practices permanent. The SJI is very excited about what we are doing. Dr. Wagenknecht-Ivey has decades of experience with courts across the country, and she has worked with our court through multiple strategic planning efforts over the years.

There are several other factors to mention briefly. First, we need to train all of the temporary judges and court staff in our virtual technology. Second, for our pro se litigants in family law, we built access and they came. We created on-line assistance and saw the requests *triple* during the pandemic.³ Third, interpreters have refused to come in courthouses during the pandemic and we have needed to create new ways of doing business with them. Our experience is that remote interpretation takes longer but we are working on this to refine the practice to be more viable, effective, and ultimately less expensive.

³ With increased access due to a shift from in-person to remote, our Family Law Facilitators responded to 9,207 requests for assistance from self-represented litigants in 2020 as compared to 3,331 requests in 2019.

Our Budget Focus

Superior Court's Covid-8 budget request addresses four areas:

1. increasing capacity to try older criminal trials for violent and sex crimes and for ex parte, including the anticipated flood of eviction cases;
2. increasing access to justice for those who come to court through organizational change;
3. Family Law access, particularly addressing needs of pro se litigants and heavy commissioner calendars;
4. *Blake* and other sentencing matters.

1. Increasing Capacity to Try Old Criminal Trials for Violent and Sex Charges.

Our conclusion is that we will need to staff an additional eight (8) criminal courts for three years, in order to reduce trials for violent and sexual assault charges to pre-pandemic levels. Our assumption is that we will try largely violent and sex crimes for the next three years, because there are so many.⁴ We examined the number of pending trials/charges for Homicide, Assault in the First Degree, Assault in the Second Degree, Kidnapping, Robbery in the First Degree, Burglary in the First Degree (which includes a weapon or assault), Rape, Indecent Liberties, Rape of a Child, Child Molestation and Child Abuse. *We did not consider* Robbery in the Second Degree, Failure to Register as a Sex Offender, or any nonviolent crime, including Burglary in the Second Degree, Taking a Motor Vehicle, Theft, drug crime, etc. This is not a value judgment, but a recognition of which trials must go first.

Methodology

Our analysis: to determine the number of uncompleted filed charges for violent or sex crimes, we examined the difference in the number of cases year over year February 2020-February 2021; average percentage of these cases that went to trial; average length of these trials; number of days judges had for trial; amount of time that judges are waiting due to the last minute changes in the schedules of lawyers or their clients, if a case pleads, or a party is sick. We determined that six judges could try these additional violent and sex assault cases over three years. We also estimate needing two additional judges for pleas and sentencings to free up existing judges for trial.

⁴ Currently, pandemic public health measures require that we use three courtrooms for every in-person criminal jury trial. Our assumption is that these requirements will start to relax in the fall and we will return to one courtroom per trial.

Our trial backlog estimate is very conservative for three reasons: first, it does not account for new criminal cases that increase the current logjam, as we are still not able to use all of our trial courtrooms due to public health measures; second, the Prosecutor's Office has many unfiled cases not considered here; and third we are not asking for any money to address the thousands of outstanding nonviolent cases. We will address those with existing resources.

One Additional Ex Parte Courtroom: Coming Evictions

On June 30th, the moratorium on evictions will lift. These cases are expected to take a huge amount of judicial time in our Ex Parte Department. It is estimated that there are 160,000 possible cases statewide based upon data on the number of people behind in rent. In a "normal" year, 2019, there were about 10,890 orders for eviction. No one can estimate with any certainty the number that will come in. The end of the moratorium will turn the demand back on overnight. We expect a tidal wave of eviction cases after June 30.

The County's Eviction Prevention program is helpful, but their numbers are not large. The Washington State Legislature just passed the first law in the nation giving free lawyers to tenants, but the responsible agency has announced that law will not be implemented for nearly a year. Another law, the Early Resolution Project, requires mediation (which we already require), and this may help.

2. Increasing access to justice for those who come to court by improving systems and information flow.

Lawyers, litigants, jurors and interpreters respond and adapt to how the court does business. We bear the responsibility of training these outside stakeholders. This is what is variously called procedural justice or access to justice. Our employees have borne the brunt of the responsibility to address lawyers' and pro se litigants' requests for assistance with our new systems to perform their work. But the court employees, including judicial officers, suffer from a lack of widespread training and standardization, and so their communications to lawyers and litigants can be inconsistent and confusing. We must communicate, standardize, and embed into our organization our new business practices that have radically increased access to justice during the pandemic, or we run the risk of moving backward.

In addition to court personnel, the Court's external website is a critical medium for publicizing changes in court procedures and practices and for jurors. In order to effectively communicate with the public and practitioners, the website content must be overhauled to reflect current operations and ways

of accessing the court and its services. These changes have been necessitated by COVID 19. We also need to increase and improve the accessibility of information to our end users about new practices.

We have no training staff -- none -- and no effective way to preserve and disseminate training materials. The Court's intranet platform (SharePoint) is outdated and, based on the depth of change required during this past year, no longer efficiently or effectively meets our operational needs. This is great cause for concern as we prepare for an influx of case filings, the on-boarding and support of judicial officers and staff, and to address the real-time access to information needs required to enable functional court operations across all locations. We are confident that with the foundational, subject matter expert resources we request, we can complete this significant transformation of our organization within 36 months.

The Court supplies the interpreters for all parties in all matters, including criminal. We need additional resources for the increased number of cases and difficulty in remote hearings. However, with remote jury selection, the court is saving money by paying prospective jurors less for mileage costs. We anticipate that the jury savings will offset higher interpreter costs for the current biennium.

As we run an unprecedented number of jury trials, the Court Jury Department will be bringing in the largest numbers of jurors in King County Superior Court history, virtually and in person. They will need assistance.

The Information Technology Department needs to complete buildout for remote hearings and increase resiliency in our tiny department for assistance for remote hearings, which is constantly demanded by lawyers and litigants. We anticipate the need for a significant additional purchase in the future as many companies are racing to build remote trial software. We are hoping to find a Teams solution. That request is not in our budget at this time.

3. Family Law

Family Law is struggling to provide access for many family law and child custody litigants. The pandemic created numerous additional access challenges for unrepresented litigants, who struggled even more to navigate the court process when business practices were altered in response to public health requirements. We have included in this proposal a separate family law request for facilitators and evaluators, all of whom assist the thousands of unrepresented people who come to our court. The Family Law Department

made it a priority to ensure our doors stayed open so that emergency matters such as children at risk or immediate financial needs of families were addressed. This pivot to a virtual platform was nearly immediate and has continued throughout the past year.

Up to now we have been able to avoid significant backlogs in family law by stretching thin every available court resource, and with extra funding provided by the Administrative Office of the Courts early in the pandemic. As the court opens for more in-person contact, it will be impossible to serve clients both virtually and in-person with current resources. We also anticipate that there will be increased family law filings as people resume ordinary business. We have been able to cover the demand for full Domestic Violence Protection Order hearings and keep the wait for family law motions manageable (if not ideal) by hiring a long-term pro tem commissioner using COVID funding. That additional judicial capacity must be continued or families will suffer. As noted above, requests for assistance from Family Law Facilitators tripled from 3000 in 2019 to 9000 in 2020. Additional Facilitators are required to ensure that self-represented parties, who often face additional barriers such as poverty, limited English proficiency, or domestic violence, have access to essential family law relief. The funding that we are requesting will allow us to meet critical need to serve King County families.

Dependency, Civil, Juvenile Offender - no requests

We have no budget asks for Dependency, Civil and Juvenile Offender. They are relatively current. However, Dependency is down 46% and this trend is completely ahistorical, leading all dependency observers to believe that the downturn is due to school closures, because teachers are mandatory reporters and often the source of reports. We expect these cases to rise to historically average levels in the fall. We make no request at this time but will likely have a small request in 2022. ITA continues to rise. We have a small request for ITA for technology assistance until such time as the lawyers return in person.

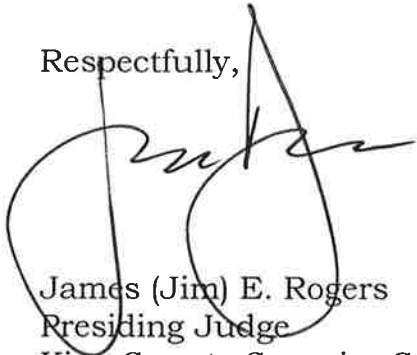
4. Blake resentencings, other changes in the law

Current estimate for the number of *Blake* resentencings is 725. We plan to simultaneously apply for money from the State for *Blake* resources. But *Blake* is not the only recent change in the law, and these 300 other resentencing cases involve more serious cases for violent convictions such as murder and robbery. Victim involvement will be required and we expect that

they will take significantly longer than the average *Blake* resentencing.

Thank you for your consideration of our budget request.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim E. Rogers". The signature is written in a cursive style with a large, prominent initial "J".

James (Jim) E. Rogers
Residing Judge
King County Superior Court

A handwritten signature in black ink, appearing to read "Linda Ridge". The signature is written in a cursive style with a large, prominent initial "L".

Linda Ridge
Acting Chief Administrative Officer
King County Superior Court

cc: Council Chair Claudia Balducci