



Legislation Text

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, during the 2005 budget process, the budget and fiscal management committee heard testimony from the defender agencies expressing concerns regarding the funding model including the lack of transparency and inadequate funding for salaries, benefits and administrative expenses, and

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

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

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

WHEREAS, the motion and the report required by Ordinance 15083 was due on January 14, 2005, and

submitted to the council on February 23, 2005, and

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

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

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

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

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

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

A. **Uniform Cost Structure.** The purpose of the model is to provide a framework for creating a uniform basis of payment that is consistent across all contract agencies providing indigent legal defense

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

B. Parity. 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. For the purposes of the model, "salary" means pay exclusive of benefits. Parity means that public defender attorney salaries shall be comparable to the salaries of those similarly situated attorneys in the office of the prosecuting attorney. The office of the public defender shall be responsible for tracking and updating public defender attorney salaries annually in the Kenny Salary Table. The Kenny Salary Table shall be updated annually to account for cost of living adjustments, step increases for non-senior level attorneys and parity increases for all attorney levels including seniors and supervisors.

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

3. Assigned Counsel Costs. The council acknowledges the escalating expenditures for assigned counsel and the need for the county to implement measures to control these costs. The council hereby requests the executive to delay soliciting proposals for a new agency to accept conflict cases until the executive has transmitted and the council has approved by motion a business case that provides a description of and a justification for a new agency. The business case shall include actual assigned counsel expenditures from 1998

to 2005, targets for 2006 to 2008, a review of cases assigned to counsel outside the public defender agencies to determine if the cases were assigned because of an ethical conflict or for some other reason and a cost/benefit analysis that shall analyze if savings can be achieved by contracting with a new agency to handle conflict cases. The motion adopting the business case shall be transmitted to the council no later than May 1, 2006.

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

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