

2. **PROPOSED MOTION 2009-0177:** A motion to amend the Public Defense Payment Model consistent with the recommendations of this report as proposed in Motion 2009-0175.
3. **PROPOSED ORDINANCE 2009-0176:** 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.

In addition, the executive transmitted to the council Proposed Motion 2008-0600 addressing the OPD's methods for addressing persistent offender case payment.

BACKGROUND: The defender agency contracts are unique in the county, in that the county pays for "caseload" on a workload basis. In addition, the county is committed to keep defender attorney salaries at parity with attorneys in the prosecutor's office. Therefore, the defender agency contracts are based on a complex formula where the agencies receive funding for salary and overhead as part of the caseload calculation.

King County has contracted for indigent legal defense services for over 30 years. In fact, several of the current contractors have contracted for several decades to provide indigent defense services for the county. The agencies are required to deliver the legal services as independent contractors. This includes ensuring that attorneys are properly trained, supervised, and otherwise supported. Nevertheless, the public defender agencies are affected by reforms and changes in the county's criminal justice system. A significant decrease in cases, or a change in how those case are handled, as a significant impact on the defender agencies.

Since 1988, defense attorneys have been budgeted to achieve salary parity with the Prosecuting Attorney's Office and the agencies are required to abide by this pay scale. Additionally, contract workload is scaled to adhere to caseload standards which define attorney workload. The agencies are required to provide certain levels of service to clients including being required to contact their clients within five days of assignment, provide effective assistance of counsel, and keep clients' secrets and confidences. The total amount of reimbursement included in a contract resulted from the application of the Public Defense Payment Model approved by the King County Council Motion 12160 in 2005. The allocation for each General Fund funded case area was calculated to provide funding for public defender salaries at parity with similarly situated attorneys in the Office of the Prosecuting Attorney. The agencies' staffing plans may be reviewed by the Office of Public Defense to verify that attorneys' experience level meets or exceeds required experience for case practice area, and placement within the salary schedule is reasonable.

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.

Because of public questions from the defender agencies and other groups, during the council's review of the proposed 2009 budget, the council opted to require by proviso a review of the payment model and change the timing of contract negotiations. In addition to the provisos, 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.

ATTENDING:

1. Jackie McLean, Director, Department of Community and Human Services
2. V. David Hocraffer, Public Defender, Office of the Public Defender