

# Report of the King County Public Defense Work Group

**Final – June 15, 2015**

The adequacy of the budget and staffing levels for the Department of Public Defense (DPD) was a major issue during development and review of King County's 2015/2016 biennial budget. The County Council approved the DPD budget, subject to two provisos:

Section 18, P3: Of this appropriation, \$200,000 shall not be expended or encumbered until the executive transmits a report on the sufficiency of the staffing and other resources of the county's department of public defense in relation to its caseload and a motion that accepts the report, and the motion is passed by the council. The motion shall reference the subject matter, the ordinance number, the ordinance section number and the proviso number in both the title and body of the motion.

The report shall include, but not be limited to:

A. An analysis and assessment of the methods used by the executive, in preparing the proposed 2015-2016 biennial budget, to determine the sufficiency of the staffing and other resources of the department of public defense in relation to its caseload;

B. An analysis and assessment of the concerns raised by the King County public defense advisory board in its budget report dated October 31, 2014; and

C. Any recommendations for changes in the staffing and other resources of the department of public defense or in the methods used to determine the sufficiency of the staffing and other resources of the department of public defense in relation to its caseload.

In preparing the report, the executive shall work in collaboration with the King County public defense advisory board.

Before transmittal of the report, the executive shall submit a draft report to the director of the department of public defense and the public defense advisory board for their review and comment. Any comments provided shall be included in the final report.

Section 49, P1: If the executive forms, or executive branch employees participate in, a work group to consider the staffing needs of the department of public defense, its caseload levels, its transition plans, the impact budget changes could have on the clients the department serves or on the quality of public defense in King County, or related matters, the executive shall transmit to the council monthly reports on the membership, status, progress and recommendations of the work group.

The executive shall not lay off any employee of the department of public defense who is an employee on January 1, 2015, before the earlier of either the date the report and motion required by section 18, Proviso P3, of this ordinance is filed or April 1, 2015.

In response, the County Executive formed a work group to review DPD's budget and staffing levels on November 17, 2014. The Executive noted: "King County has a well-deserved national reputation for excellence in protecting the rights of the accused, earned by the hard-working public defenders and staff. This working group will help assess how to maintain that leadership, while modernizing and creating new efficiencies across the justice system."

The work group consists of the Director of DPD (interim Director Dave Chapman through mid-January, Director Lorinda Youngcourt thereafter); Lisa Daugaard and Dave Roberson, two senior managers in DPD; retired Judge Sharon Armstrong, representing the Public Defense Advisory Board; retired Judge James Doerty, representing Superior Court; Gail Stone of the Executive

Office, and Dwight Dively, the Director of the Office of Performance, Strategy and Budget (PSB). Marc Boman of the Public Defense Advisory Board also participated extensively.

The group met weekly for about four months and reviewed materials about caseloads, caseload standards (the maximum number of cases that can be handled by a lawyer to ensure quality), staffing levels, use of assigned counsel (lawyers not employed by the County who are used to handle cases in some situations), organizational structures, training needs, and funding levels. The group also looked at comparisons with public defense services in other Washington counties.

This report reflects the culmination of the group's work. The group reached consensus on all recommendations included in this report.

## **Background**

An indigent person accused of a criminal offense has a right to counsel at public expense under Gideon v. Wainwright.<sup>1</sup> This right has subsequently been extended to other situations, including child dependency cases.<sup>2</sup> As a result, the number of cases requiring public defenders is not within the control of DPD. Rather, it depends on the actions of the Legislature, law enforcement agencies, decisions made by prosecutors, and the number of cases entering the juvenile dependency system.

A very large proportion of cases in the King County courts involves indigent persons and thus require public defense. Between 2010 and 2014, 86% to 94% of felony cases were assigned a public defender. Between 2010 and 2013, 50% to 54% of misdemeanor cases were assigned a public defender. This spiked to 77% in 2014, largely due to a decline in cases filed while the number assigned to public defense remained about the same. Between 2010 and 2014, 94% to 97% of juvenile cases were assigned a public defender.

In order to ensure quality public defense, the Washington State Supreme Court has established caseload standards, which represent the maximum number of cases that can be handled by a public defender. These standards recognize that some cases are more complex than others, so the standard for felonies is a smaller number of cases than that for misdemeanors. Some categories are not simple fixed numbers but include "case weighting," which is intended to recognize that some types of cases within a category require more time than others. Murder charges, for example, require more attorney time than assault charges, even though both are felonies. King County has managed felony case weighting by assigning different "credits" to different types of felonies. Thus, in this category, the real standard is based on the number of case credits an attorney has.

A complicating factor is the potential for conflicts when multiple individuals are charged in the same case or when an attorney has previously represented someone involved in a new case. Ethical standards adopted by the Washington State Supreme Court prohibit attorneys from accepting cases that create conflicts of interest, and this prohibition extends to the other attorneys and staff in the same organization. Conflicts often require certain cases to be assigned to individual attorneys, known as "assigned counsel," who are not part of the regular public defense organization.

As a result of these factors, the size and cost of the public defense function is largely beyond the control of the organization providing the service. It depends on the number of cases entering the

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<sup>1</sup> 372 U.S. 335 (1963).

<sup>2</sup> Chapter 13.34 RCW.

system, charging decisions made by prosecutors, the number of defendants who are indigent, and the caseload standards imposed by the courts.

### **Brief History of Public Defense in King County**

Counties and other governments responsible for public defense have chosen to organize the function in many different ways. Some use an internal agency, some contract with law firms or other organizations, some use assigned counsel, and many use a combination of methods.

Starting in 1969, King County provided public defense services by contracting with non-profit organizations. The number, size, and responsibilities of the organizations changed over time, but eventually stabilized at four agencies in 1987. Some functions, such as defense of felonies, were provided by all four agencies. Other functions, such as defense of individuals with mental illness in the Involuntary Treatment Act (ITA) court, were handled by a single agency. Each agency was organized, staffed, and managed in its own way. Employees had varying salaries and benefits, depending on which agency they worked for. Agencies were paid based on cases and credits, with a reconciliation at the end of the year. The County imposed certain standards, such as compliance with caseload requirements and salary parity for public defense attorneys with prosecutors. These standards were generally followed, but it appears that pay parity was not always achieved. Some cases were handled by assigned counsel, usually when all agencies had conflicts or when workload suddenly exceeded the agencies' capacities. A small County agency, the Office of Public Defense, managed the contracts with the non-profit organizations.

In 2006, a group of employees of the non-profit public defense agencies sued King County (Dolan v. King County), alleging that they were public employees for the purpose of membership in the Washington Public Employees Retirement System (PERS). They argued that King County effectively controlled their work, making them public employees and thus eligible for retroactive and prospective retirement benefits. The plaintiffs prevailed in the Pierce County Superior Court and the Washington State Supreme Court upheld the decision in 2011.<sup>3</sup> As a result, the employees of the non-profit organizations were enrolled in PERS.

The court decisions did not resolve all issues in the case, including the extent that benefits were retroactive. The County and the class agreed on a settlement of the remaining issues, but the State Department of Retirement Systems (DRS) objected to some provisions of the settlement. In 2014, the Court of Appeals in an unpublished opinion determined that DRS was not bound by the settlement. DRS subsequently intervened in the case. On June 5, the Superior Court approved a Stipulation and Order agreed to by all three parties that resolves most of the issues in the case and allows class members to obtain their retirement benefits.<sup>4</sup>

After the Supreme Court's Dolan decision, it became clear that employees of the non-profit organizations likely would be eligible for other County benefits, such as health insurance and vacation. The practical effect would be to have County employees working for organizations not directly run by the County, which would be a very complex system. As a result, the County created the new Department of Public Defense (DPD) and employees of the non-profit agencies became regular County employees as of July 1, 2013.

The King County Charter was amended by voters in November 2013 to describe requirements for DPD. Sections 350.20.60 and 350.20.61 describe the duties and administration of the

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<sup>3</sup> 172 Wn.2d. 299 (2011).

<sup>4</sup> The mechanism for paying the class counsel's fees and the County's responsibility, if any, for paying interest on contributions, remain unresolved.

Department, and Section 350.20.65 creates the Public Defense Advisory Board to “review, advise and report on” public defense. The Advisory Board also has a role in selecting the county public defender, who is the director of the Department.

Detailed requirements for the Department are provided in Chapter 2.60 of the King County Code. These include compliance with the American Bar Association’s Ten Principles for a Public Defense Delivery System and Washington State Standards for Indigent Defense Services.<sup>5</sup>

### **King County and Comparative Public Defense Data**

Each of the non-profit agencies had its own case management system, many of which were quite outdated. As a result, it is challenging to get complete and timely data about some aspects of public defense services. This will be resolved when DPD deploys its new unified case management system in May 2015.

Despite these challenges, some factual and comparative data are available from DPD, the State court system, and the State Office of Public Defense. In 2014, public defenders were assigned 29,618 cases for 25,450 clients. Of these, 5,791 were new felony cases, 5,734 were new King County misdemeanor cases, 4,145 were new Seattle Municipal Court misdemeanor cases, 1,752 were juvenile offender cases, 1,606 were dependency cases, and 3,586 were involuntary treatment cases.<sup>6</sup>

Comparative data are not yet complete for 2014. In 2013, King County’s public defense system had the following comparisons with other large, urban counties<sup>7</sup> in Washington:<sup>8</sup>

- The mix of felony cases is more serious in King County. Murder, sex crime, robbery, and assault cases represented 19.8% of resolved cases in King County, versus 16.7% for the other urban counties. This probably reflects differences in plea bargaining practices and the greater availability in King County of alternatives to prosecution of low level felonies. This more complex case mix increases attorney and support staff time and costs per case.
- King County had three capital murder cases (cases in which the death penalty was requested by the State) underway in 2013. Very few other counties have any such cases. The Washington caseload standards and federal case law require more attorneys and support staff (investigators, social workers, and mitigation specialists) for defendants potentially subject to the death penalty, thereby making these cases very expensive.
- King County felony cases are much more likely to go to trial. The percentage of resolved cases resolved by trial was 5.4% in King County versus 3.4% in other counties. This again is likely a result of many less serious cases being diverted out of the system, with a higher share of complex cases remaining.
- Of felony cases that go to trial, a slightly higher percentage lead to acquittals or dismissals in King County (14.8%) versus other urban counties (13.7%).

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<sup>5</sup> KCC 2.60.026(4) and (5).

<sup>6</sup> A “new” case is distinguishable from a case assigned in 2014 for probation or other review.

<sup>7</sup> Clark, Pierce, Snohomish, and Spokane.

<sup>8</sup> Data from Washington State Courts: [www.courts.wa.gov/caseload](http://www.courts.wa.gov/caseload).

- Data provided to King County Councilmember Kathy Lambert by the State Office of Public Defense<sup>9</sup> showed that estimated costs per case were significantly higher in King County than other urban counties. For example, felony defense costs were estimated at \$4,157 per case in King County, compared with \$1,684 in Pierce County and \$2,083 in Snohomish County. This reflects a variety of factors, including the greater complexity of cases in King County, stricter compliance with caseload standards in King County (especially case weighting for felonies), differing mixes of support staff, and higher salaries and benefits in King County due to the County's policy of requiring pay parity with prosecutors and the higher cost of living. It is also unclear whether the counties used the same formula to arrive at their estimates, including how the costs of facilities, benefits, and other expenses were considered.

### **2015/2016 Budget Process**

Developing a 2015/2016 biennial budget for DPD was a very challenging process. The four former non-profit agencies had become DPD "divisions" but otherwise had not significantly changed. Each was still organized and managed in a different way. Some overhead functions had been centralized but each division was still located in its previous office space. No unified case management system existed, so it was very difficult to understand whether attorneys were at, above, or below caseload standards. Each division had its own models for supervision and support staffing, making it difficult to calculate overall budget estimates for these costs.

A further complication was that the agencies had more employees than the County expected when DPD was formed in July 2013. This was, in part, due to contracted functions not supported by County funds. However, it also appears that at least some agencies were not providing salary parity, as expected by the County, and were using the resulting savings to hire additional staff.

During 2013 and 2014, many employees of DPD became members of two unions. Bargaining for initial contracts began in 2013 but has proceeded slowly. No contracts were in place in time for 2015/2016 budget development.

County leaders generally assumed some efficiencies could be realized by consolidating the number of divisions, thereby eliminating duplicative administrative and management staff. Budget proposals assumed consolidation to three or even two divisions. Some DPD attorneys pointed out the problems this would generate with conflicts, but it was assumed the new case management system (whose implementation fell behind schedule as a better approach was developed) would resolve this.

Neither DPD nor PSB staff had experience with developing a complete biennial budget for the new department (the 2014 Budget was conceptually based on the old structure, with most of the budget details subsumed in agency budgets). Issues such as office space rent, equipment costs, computer replacement, and benefits costs were all new, and the former agencies often had provided DPD with only limited information.

In the absence of good information on caseloads, management structure, staffing, and support costs, the Executive's 2015/2016 budget development process proceeded under a series of assumptions that ultimately proved to be untenable. These included modeling staffing as if the old agency approach was still in place, which didn't recognize that agencies actually had more staff than assumed to deal with issues such as long-term leaves and attorneys practicing at different

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<sup>9</sup> Memo dated October 28, 2014.

courts, which requires travel time. Efficiencies were assumed from reducing four divisions to three. “Office manager” positions were eliminated based on information that suggested these were duplicative management personnel. Budget development was also complicated by the serious financial challenges facing the County’s General Fund due to structural limitations on revenues.

Formation of the Public Defense Advisory Board had been delayed while the selection process for Board members was developed and implemented. As a result, the Board was not able to provide feedback on the budget until near the end of the County Council’s budget review process. The Board’s feedback, along with testimony from some DPD employees, suggested that the 2015/2016 Proposed Budget was inadequate, especially in that it assumed many of the “excess” employees could be eliminated through layoff or attrition, with the Department still able to serve its clients at the standards set by the County. In response, the Council worked with Executive staff to develop the budget provisos shown at the beginning of this report. The Executive then formed this work group. In compliance with the budget proviso, no DPD employees have been laid off in 2015.

### **Work Group Findings**

The work group has reached consensus on a series of findings about King County’s public defense function:

1. **Reducing the number of operating divisions is currently impractical and largely immaterial.** DPD has consolidated the appropriate administrative staff into central units, and the Director’s proposed reorganization reduces divisional management positions. While it may be possible to eventually reduce the number of divisions, maintaining four operating divisions, at least in the near term, allows for the maximum number of cases to be handled by DPD employees rather than assigned counsel. There are ways to optimize the workload and size of the divisions, which are described in the recommendations below.
2. **The new case management system will lead to greater efficiency over time.** The system and a new organizational structure will allow cases to be assigned where capacity exists and will allow closer monitoring of caseloads by attorney. Opportunities to shift work or change staffing levels will be identified far more quickly than is possible today.
3. **Staffing levels in the 2015/2016 Budget are inadequate to meet caseloads and standards in some areas.** Specific recommendations are provided below. Handling these cases with assigned counsel could be more costly and may not meet the County’s adopted quality standards.
4. **The requirement to operate at multiple geographic locations complicates staffing and reduces opportunities for efficiencies.** DPD staff support two principal courthouses in downtown Seattle and Kent, the ITA court at Harborview, the juvenile court on First Hill in Seattle, and a variety of District Court locations throughout the county. In some cases, an individual attorney has cases at multiple locations, which complicates scheduling and adds travel time. Some of this inefficiency is unavoidable, but planned changes in case assignments and scheduling practices are expected to yield efficiencies over time.
5. **The current structure of the operating divisions can be improved to increase efficiency.** Some of the divisions have a small number of attorneys working on specific types of cases, which does not optimize supervision or backup. There may be too many divisions practicing in certain case types. Over the next year, DPD will restructure divisional assignments to create more consistency and efficiency. This process must be done as current cases are completed to not disrupt these cases.

6. **The County should use assigned counsel only for conflicts and to manage short-term workload fluctuations.** Long-term quality and compliance with standards is best assured by using DPD employees. In addition, while hourly compensation for assigned counsel is low, the actual total payments to some assigned counsel are above the cost of County employees.

### **Work Group Recommendations**

The work group has also reached consensus on a series of recommendations. Some of these can be implemented by the Department, some require policy approval by the County Council, and some require budget changes to be proposed by the Executive and approved by the Council.

1. **The organizational structure of DPD should be revised, as proposed by the Director.** Director Youngcourt has developed a structure for the Department to achieve four goals: a) unify the organization; b) provide standardized quality assurance; c) maintain the number of operating divisions needed to provide conflict-free representation to about 95% of eligible clients; and d) manage resources efficiently and intelligently. This structure would include department-wide training, policy, and operations (administrative support) units, plus four operating divisions. The senior management team would also include four managing attorneys for felonies, misdemeanors, other case types, and assigned counsel. These managing attorneys would provide quality assurance and general supervision in each of these areas, and would serve as liaisons to their counterparts in the Prosecuting Attorney's Office (PAO) and the courts. More details about the specific functions in various areas can be seen in the attached organizational chart. Note that this chart is preliminary and may change. Specific labels for units are being discussed with the County's Human Resources Division.

The expected benefits of this structure include better functional oversight of the major areas of practice, improved training, and consolidated administrative functions overseen by a non-lawyer. The number of director-level positions would be reduced, in part because the heads of the operating divisions would be senior managers, not directors. These operating divisions also would not have deputy directors, as they do in the current structure.

While classification decisions remain to be made, it is expected that the cost of the positions in the new structure will not exceed that in the 2014 structure. However, the positions will be used more effectively to provide better oversight and quality assurance.

2. **Attorney staffing levels should be adjusted from the levels set in the 2015/2016 Budget, and attorney supervisors and support staff set to corresponding levels.** DPD staff compiled caseload data for 2014 by case type, and calculated the actual number of attorneys doing the work as of the end of 2014. In some areas, the number of attorneys is higher than the figure assumed for the 2015/2016 Budget, as seen in the table below. The largest shortfalls are in dependencies and involuntary treatment court (ITA). The work group recommends that attorney staffing levels by case type be set as proposed in the table on the following page.

For felonies, including calendars and complex cases, caseload standards suggest that 64 attorneys are needed to avoid sending cases to assigned counsel for reasons other than conflicts. The work group proposes 61 FTEs<sup>10</sup> for this, with the expectation that additional

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<sup>10</sup> "FTE" means "full-time equivalent" employee. In some cases, an FTE is comprised of two part-time employees.

<b>Case Type</b>	<b>Budgeted Staffing</b>	<b>Current Staffing<sup>11</sup></b>	<b>Proposed Staffing</b>
Felonies (including calendars and complex cases)	61	64	61 FTE / 3 TLT
Misdemeanors (including calendars, expedited, and mental health court)	24.3	27.4	22.3 FTE / 4 TLT
Juvenile (including calendars)	12	11.8	10 FTE / 1 TLT
Dependencies (including calendars)	26.1	27.1	30.1 FTE
ITA	10	11	13 FTE / 2 TLT <sup>12</sup>
Becca, contempt of court, adult drug court	10	7.9	8 FTE / 1 TLT
<b>TOTAL<sup>13</sup></b>	<b>143.4</b>	<b>149.2</b>	<b>144.4 FTE / 11 TLT</b>

attorneys will become available for regular felonies as death penalty cases are completed over the course of the year. DPD will need 3 TLTs<sup>14</sup> for 2015 in the interim. This approach assumes that no new death penalty cases are filed. If such filings are made, additional attorneys will be needed.

The work group recommends 26.3 attorneys for misdemeanors, including calendars, expedited cases, and mental health court. Some of this workload can be reduced over time by more efficient assignment among the work units. Thus, the work group recommends 22.3 FTEs and 4 TLTs, with the term of the TLTs extending to mid-2016.

The work group believes about 10 attorneys are needed for juvenile cases, including calendars, and this is the recommended number of FTEs. However, until caseloads can be reassigned among the work units, the current level of 11 attorneys needs to be maintained. Thus, 1 TLT is recommended through mid-2016.

The current staffing level for dependencies is inadequate. The time required for these cases is significantly more than has been recognized in past modeling. The work group recommends 30.1 FTEs.

The current staffing level for ITA court is inadequate. The work group recommends 13 FTEs. The implementation of "Joel's Law", which allows family members to bring involuntary commitment proceedings, may increase the number of filed cases to which DPD is assigned. In addition, the loss of ambulance service when AMR canceled its contract has created a need for 2 additional TLT attorneys to travel to hospitals for cases handled through video hearings. This may be temporary if a new ambulance contract is secured.

<sup>11</sup> Figures as of early June 2015. These numbers differ slightly from those discussed with the work group, which were figures for the end of 2014.

<sup>12</sup> The FTEs represent a baseline level of staffing under the operational structure in place at the beginning of 2015. Subsequently, AMR canceled its contract to transport individuals to the ITA court, which required defenders to travel to hospitals. This has created a need for additional TLT attorneys to cover video hearings, at least until new contracts are in place.

<sup>13</sup> Does not include attorneys staffing the Seattle Municipal Court and State sexually violent predator contracts.

<sup>14</sup> "TLT" means "term-limited temporary" employee. This is the County's system of classifying temporary staff.



The work group did not examine staffing levels for Becca, adult drug court, and contempt of court cases. DPD and PSB staff reviewed these categories and believe current staffing is about adequate, with the need to cover some organizational transitions. 8 FTEs and 1 TLT for the remainder of 2015 are recommended.

The figures shown here exclude staffing for contracted work for the Seattle Municipal Court and the State's sexually violent predators. These staffing levels are determined by the contracts and changes should be funded through billings to the City and State.

These recommended staffing levels are based on current caseloads. If caseloads change, more or fewer attorneys would be needed. The work group considered having some attorney positions be TLTs to allow additional flexibility, but concluded that filling TLTs is challenging and it would be better to manage staffing levels through adding or holding vacant FTEs.

In addition to attorney staffing, attorney supervisor positions need to be added to comply with applicable standards for supervision. National and state standards establish a ratio of 1:10 for attorney supervision in public defense. Several supervisors currently exceed that ratio. Two to three additional FTE attorney supervisors are needed, depending on potential reorganizations described below. The work group recommends adding 2 FTE and 1 TLT attorney supervisor.

The work group also recommended that support staff positions be adjusted to correspond to the recommended levels of attorney staffing. As a result, DPD and PSB staff developed recommendations to meet this expectation. For paralegals, investigators, and social workers, a ratio of 0.5 positions per attorney is used, although there are exceptions for attorney workload that doesn't require this support. In total, an increase of 0.5 FTEs and 5 TLTs from budgeted levels is recommended for these positions.

Similarly, clerical positions are staffed at 0.25 FTE per attorney, again with some exceptions. This requires adding 8 FTEs and 3 TLTs to the budgeted levels. Current staffing slightly exceeds this, and will be managed through attrition.

3. **The office manager positions deleted in the 2015/2016 Budget should be maintained.** The roles of these individuals were not fully understood during the 2015/2016 budget process. They provide a critical support function to each operating division and also supervise other staff in some cases. All four positions are needed in the near term. It is possible that future office space consolidations will allow one position to be eliminated.
4. **Staffing flexibility should be consolidated in a single operating division and attorneys and support staff should gradually be shifted among divisions to optimize supervisory ratios.** One artifact of merging four previously independent organizations together is that each adjusted staff levels over time. As workload changed, each agency would add or reduce staff. This creates considerable organizational uncertainty. Director Youngcourt has proposed to stabilize staffing levels in three of the four operating divisions, and make necessary adjustments solely in the fourth division.

In addition, under the existing structure, only rarely would actual staffing levels lead to optimal supervisory ratios (e.g., 10 attorneys for one attorney supervisor). DPD has begun to gradually realign staff to come closer to the optimal ratios. This means some units will grow and others will shrink. For example, attorneys might be added to the misdemeanor practice in one operating division and reduced in another division. Because of the need to manage conflicts

and because of limitations on office space, this change needs to occur gradually over two to three years.

5. **DPD should consider reducing the number of operating divisions in certain practice areas over time.** The current approach for operating divisions to be assigned different types of cases developed over time with little review of whether this provided optimal levels of staffing or quality. Four divisions are necessary to defend felonies, but it is probably not necessary for all four to defend juveniles given the dramatic reductions in caseload in this area in recent years. The Department should review each case type and decide on the optimal number of divisions assigned to each area, and make adjustments in its 2017/2018 budget proposal.
6. **DPD should consider reducing the operating divisions from four to three, but only as a long-term possibility.** As discussed in the “Findings” section, it is not practical to reduce the number of operating units in the near term. However, as space consolidation occurs, it may be possible to eliminate one division over the course of several years.
7. **DPD should revise or eliminate the practice of “pre-crediting” for certain types of felonies.** Under the non-profit agency structure, the County agreed to assign case credits in advance for more complex felonies. This ensured that agencies had adequate staffing and funding to handle these time-consuming cases. This practice seems archaic in a consolidated Department. The Department has recently eliminated pre-crediting in all felony cases.
8. **PSB and DPD should develop a formal staffing model for use in the 2017/2018 budget process.** One challenge in developing the 2015/2016 budget was the absence of a model that would forecast staffing needs. The model used previously was based on contracting with non-profit agencies and making periodic adjustments as caseloads changed. Creating a County department resulted in different levels of flexibility.

The new staffing model should project staffing needs for attorneys and specific categories of support staff as caseloads vary. Separate projections would be made for each case type to reflect the appropriate caseload standards. The model should also project supervisory needs if the number of attorneys and support staff changes.

9. **DPD should develop a policy on use of assigned counsel, which should then be reviewed by the Executive and adopted by the Council.** Assigned counsel have been used in a variety of ways in the past. The work group recommends that assigned counsel only be used in two circumstances: 1) conflicts that cannot be handled by different operating divisions in the Department; and 2) short-term workload fluctuations that might result from major events or focused activities by law enforcement. The work group recommends that assigned counsel not be used routinely because of staffing limitations in DPD. The adopted policy should be reflected in DPD staffing levels and budgets. This should create the opportunity to reduce the budget for assigned counsel.
10. **DPD, working with PSB and the County’s Human Resources Division, should explore options to develop a small group of attorney trainees to allow vacancies to be filled quickly.** The standard staffing model for County agencies is to authorize a specific number of positions for each job type. When a vacancy occurs, the position is filled through a hiring process, which usually takes several months. While the position is vacant, work is deferred, handled through overtime, or handled with temporary employees.

This standard model doesn’t work well for DPD’s attorneys. Work cannot be deferred and cases cannot be assigned to other attorneys if they are at their caseload limits. Thus, the

current practice is typically to use assigned counsel. If an assigned counsel policy is developed as described in the previous recommendation, this practice should be minimized.

One way to do this would be to have a small pool of attorney trainees who are preparing to become public defenders. The number would be set based on expected retirements and other departures and likely would vary over time. In concept, this could be similar to a program called "Succession Planning" that is included in the County's budget as an adjunct to the Sheriff's Office. This program allows individuals to be preparing to become Sheriff's deputies before vacancies occur. This minimizes the time that positions are open and ensures qualified candidates are available.

11. **DPD should develop a formal, standard training program.** Each of the four non-profits had its own training plans and practices. These need to be standardized in the Department. As described above, a Training unit is part of the proposed organizational structure.
12. **DPD should pursue opportunities for efficiency when space is consolidated.** The four separate non-profits had their own office spaces, especially in downtown Seattle. If the County proceeds with the planned consolidation of these offices into the Yesler Building (or some other location), there likely will be opportunities to reduce some administrative staff and equipment costs. There may also be further opportunities to optimize supervisory ratios.
13. **DPD, working with PSB, should review the economics of the current State contract to represent sexually violent predators.** The work group believes that the State contract is not fully covering the costs of this representation and thus is being subsidized by the County's funds. If this is the case, the County should seek full reimbursement or discontinue the contract.
14. **County leaders should review opportunities for efficiencies and financial savings in the criminal justice system that cannot be achieved solely by DPD.** As noted previously, DPD's workload is largely determined by other County agencies and branches of government. The work group notes that savings in public defense would be possible if changes are made in other parts of the system. There might be savings in other agencies and branches, as well. Examples of changes that could be considered are:
  - No longer filing death penalty cases. These cases typically cost millions of dollars more than other aggravated murder cases. Much of the cost increase is in public defense, but higher costs are borne by other parts of the system, too.
  - Plan for the PAO and DPD to share technology and equipment for courtroom use, and house the equipment at the court. There is no need for the PAO and DPD to acquire duplicative laptops, projectors, screens, and other equipment if these can be pooled and housed at the court.
  - Encourage other justice system partners, particularly the courts, to consult with DPD and assess workload impact before planning or implementing scheduling, calendaring, or other business practice changes. These often have unanticipated consequences for DPD staffing needs.

## **Conclusion**

The work group model was a successful means to address a complex set of budget and staffing issues for an organization in the midst of many fundamental changes. The work group wants to thank DPD and PSB staff for their efforts to assemble information. The County members of the group also want to thank the individuals who volunteered their time and expertise to make this work possible.

**Public Defense management structure**

GOALS

- client-centered
- high-quality
- efficient

