



**King County**

**Office of the Public Defender**

**Persistent Offender Contract Changes**

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### **Executive Summary**

The Office of the Public Defender (OPD) pays four contract public defense agencies to provide legal representation for indigent persons, pursuant to the Public Defense Payment Model<sup>1</sup> (Model) enacted by the King County Council in 2005. The Model calculates the value of a “credit,” which includes an allocation for costs including salaries, benefits, support staff, administration, and rent. Most felonies are paid on the basis of one felony credit per case. Murder cases are paid two felony credits. For extraordinary cases, agencies may apply for extra credits.

Agencies are not funded under the model for persistent offender cases, they bill on an hourly basis: for every 12.1 hours billed, the agency receives the value of one felony credit. Some cases can take hundreds of hours.

For the 2008 public defense contracts, OPD proposed to change the billing procedure for persistent offender cases. The Office of the Public Defense’s proposal was to give three felony credits when a persistent offender case is assigned, and agencies could apply for extraordinary credits for persistent offender cases that meet the current definition of extraordinary cases. A King County Council 2008 budget proviso<sup>2</sup> directed OPD to maintain the status quo payment procedure for persistent offender cases and submit a report to Council. This report responds to that proviso.

Hours billed in persistent offender cases may result in attorney/staff costs over \$100,000 a case. Median hours billed vary widely among agencies. The median hours for the highest billing agency was over one and a half times higher than one agency and over four times higher than two other agencies. Despite this variation in hours and that the cases are randomly assigned, all agencies are successful in over 90 percent of the cases in avoiding the sentence of life without possibility of parole.

Per council request, OPD solicited input on the proposed change in reimbursement methodology from public defense contract agencies and associations, some of which expressed concerns that under the proposed change they could receive less compensation and would not be able to spend adequate time on these cases. The Office of the Public Defender has not proposed any budget reduction for this case category.

Office of the Public Defender’s proposed change in reimbursement methodology would bring persistent offender case payment procedures in line with the payment procedures for other felony cases.

### **Introduction**

#### **1. Overview**

In 1993, Washington State voters passed Initiative 593, known as the “Three Strikes, You’re Out” Initiative. It mandated a punishment of life without possibility of parole for persons

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<sup>1</sup> King County Council Motion 12160, July 18, 2005, enclosed as Appendix A.

<sup>2</sup> King County Ordinance, Proposed No. 2007-0544.2, November 16, 2007, enclosed as Appendix B.

## Persistent Offender Contract Changes

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convicted of most serious offenses three times. In 1997, the Legislature added a “two strikes” provision, mandating the same punishment for persons convicted of two sex crimes from a specified list of crimes. Persons convicted and sentenced under these laws are known as “persistent offenders.”<sup>3</sup>

At the time, King County public defense planners anticipated that any defendant facing the possibility of a persistent offender sentence would go to trial on the charged offense, which would greatly increase the trial workload for public defenders, as well as other criminal justice agencies. Due to the unknown and potentially large impact this would have on clients and attorneys, payment was structured to reimburse on an hourly basis. However, a 2007 review of 200 persistent offender cases pending from January 2003 to June 2007 showed that only 17 percent of these cases go to trial. Eighty-three percent are resolved through plea agreements. The review also showed that although the number of hours spent on these cases varied widely among the four agencies, the result of avoiding a sentence of life without possibility of parole was consistently above 90 percent for all agencies.

The public defense of these cases is handled by all four of King County’s contract public defense agencies and is funded through the King County Office of the Public Defender (OPD). Cases are assigned randomly to all agencies, with consideration of conflicts, prior representation, and balanced workloads. Some extraordinary persistent offender cases require hundreds of hours of work. The persistent offender cases are now paid for on an hourly basis, giving one felony credit for each 12.1 hours of attorney time.

In contrast, all other felony cases are paid for on the credit basis, in accordance with Motion 12160 which established the “Public Defense Payment Model”. The Model provides for the calculation of the value of a felony credit, based on a formula including salaries, benefits, support staff, administration, and rent. The majority of felonies receive one credit at the time of assignment. If a felony case is extraordinary, an agency may apply to OPD for extra credits. Through this process of approving extra credits, OPD is able to monitor the legal services that the contractor is providing in these extraordinary, non-persistent offender felony cases.

The Office of the Public Defender proposed a change to the payment procedure for persistent offender cases for the 2008 contract, which would make the payment procedure for persistent offender cases consistent with the payment procedure mandated by the Model and in place now for all other felony cases. The King County Council directed OPD to maintain the status quo payment procedure, solicit input, and submit a report regarding the change and its effect on the contract agencies.<sup>4</sup> This report sets out below the analysis on which OPD based the proposed change in reimbursement methodology.

- 2. OPD’s review of 200 persistent offender cases from January 2003 to June 2007 showed wide variation in number of hours worked by agencies but a similar success rate of over 90percent in avoiding the sentence of life without possibility of parole.**

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<sup>3</sup> RCW 9.94A.555 and RCW 9.94A.030(33).

<sup>4</sup> King County Ordinance No. 15975, approved November 30, 2007.

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The Office of the Public Defender analyzed data on 200 cases billed by the four public defender agencies from January 2003 to June 2007. This represented all persistent offender cases in the OPD system during this time. Of those analyzed, 167 cases were closed at the time of analysis. OPD found wide variation in the number of hours billed. At the same time, there was little difference among the four agencies in rate of successful outcomes (i.e. 90 percent avoidance of sentences of life without possibility of parole).

One agency had a median of 186 hours per case, compared to the lowest agency median of 41 hours. Median is considered here since an average does not accurately represent the distribution of cases, given a few extremely long cases which skew the average. For example, one such case took over 2,000 hours. The chart below summarizes findings:

**Persistent Offender Cases Billed to OPD by Agencies January 2003 to June 2007  
Trials and Closed Cases Resolved Without a Sentence of  
Life Without Possibility of Parole (LWPP)**

	<b>Associated Counsel for the Accused (ACA)</b>	<b>Northwest Defenders Association (NDA)</b>	<b>Society of Counsel Representing Accused Persons (SCRAP)</b>	<b>The Defender Association (TDA)</b>	<b>Totals</b>
<b>Number of persistent offender closed cases<sup>1</sup></b>	22	29	52	64	167
<b>Number resolved without LWPP</b>	20	27	49	58	154
<b>Percent resolved without LWPP</b>	90.9%	93.1%	94.2%	90.6%	92.2%
<b>Number going to trial</b>	9 <sup>2</sup>	3 <sup>3</sup>	8	8	28
<b>Percent going to trial</b>	40.9%	10.3%	15.3%	12.5%	16.8%
<b>Median credits/hours for open and closed persistent offender cases, January 2003 to June 2007</b>	3.5 credits <i>42.35 hours (1 credit = 12.1 hours)</i>	10.2 credits <i>123.42 hours</i>	3.4 credits <i>41.14 hours</i>	15.4 credits <i>186.34 hours</i>	7.0 credits <i>84.70 hours</i>
<b>Average credits and hours for open and closed persistent offender cases, January 2003 to June 2007</b>	6.9 credits <i>83.49 hours</i>	14.2 credits <i>171.82 hours</i>	8.2 credits <i>99.22 hours</i>	25.1 credits <i>303.71 hours</i>	15.7 credits <i>189.97 hours</i>

<sup>1</sup> Counting only one agency per case

<sup>2</sup> Includes two stipulated trials and one bench trial

<sup>3</sup> Includes one stipulated trial

**3. The wide variation in hours translates into significantly different payments for the same type of case, contrary to the purpose of the Public Defense Payment Model.**

## Persistent Offender Contract Changes

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The Model's stated purpose is "to provide a framework for creating a uniform basis of payment that is consistent across all contract agencies providing indigent defense services."

The wide variation in hours billed per case translates into significant differences in payments per case per agency under the existing payment system: since a felony credit under the Model costs approximately \$1,303 (2008 cost), the agency with a median of 15.4 credits per case receives \$20,066 as a median payment for a persistent offender case, whereas the agency with a median of 3.4 credits per case receives \$4,430 as a median payment for a persistent offender case.

This is the type of wide variation in payments to different agencies that the Model was designed to correct.

Despite the clear intention of the Model, the existing reimbursement methodology for persistent offender cases results in situations as noted above where one agency's median payment is four times another agency's median payment for the same type of work.

The proposed change to persistent offender payments will address the disparities in payments to each agency for persistent offender cases.

#### **4. Agency and defender association input reflects concerns regarding adequate funding, administrative time, the extraordinary credit process, and caseloads.**

As directed by the council's budget proviso, OPD solicited input last December from defender agencies and associations. The responses from the following associations are enclosed as Appendices C through H:<sup>5</sup>

- Appendix C: Associated Counsel for the Accused
- Appendix D: Northwest Defenders Association
- Appendix E: Society for the Representation of Accused Persons
- Appendix F: The Defender Association
- Appendix G: Washington Association of Criminal Defense Lawyers
- Appendix H: Washington Defender Association

The responses reflect concerns regarding several issues including: a) Adequate Funding; b) Administrative Time; c) Guidelines for Award of Extraordinary Credits; and d) Caseloads for Persistent Offender Cases. These issues are addressed below.

#### **A. Adequate Funding**

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<sup>5</sup> The King County Bar Association (KCBA) did not submit a response. Executive Director Alice Paine indicated in December that although KCBA was unable to provide input at that time, KCBA may be able to review this issue and initiate a process to provide input starting in the future. KCBA is in transition because of Ms. Paine's retirement. Staff energies are devoted to preparing for this transition. In addition, the KCBA does not have a standing Criminal Defense or Criminal Law committee.

## Persistent Offender Contract Changes

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The Washington Association of Criminal Defense Lawyers (WACDL) noted in its letter that it opposed the proposed changes to the payment procedure “in large part because they provide no assurance to the indigent defense agencies that they will receive adequate and necessary compensation for three strike cases.”<sup>6</sup> The Defender Association (TDA) stated in its letter that the “financial impact on our agency would be untenable.”<sup>7</sup>

The proposed change in payment procedure does not contemplate a drastic effect on funding for these cases. In fact, expected resources for persistent offender cases for 2008 would have remained unchanged under the proposal: OPD did not propose any reduction in funds for this case type.

King County has been committed to adequate funding for public defense for many years: the caseload standards found in agency contracts make that commitment clear, and the Model is designed to provide a transparent calculation of adequate public defense funding. The proposed change is consistent with the Model.

Unlike the Model’s assumption of one attorney per case, at least one agency routinely assigns two attorneys to every persistent offender case. Some cases warrant two attorneys, but OPD would not expect an agency to assign two attorneys to every persistent offender case. Two attorneys duplicate time spent in reviewing the same documents, meeting with a client, etc. To the extent that the court may order OPD to assign two attorneys to a particularly complex case, OPD will do so, as is current practice. However, when paid only on an hourly rate basis, routinely assigning multiple attorneys increases costs to the County for these cases.

Washington Association of Criminal Defense Lawyers and the contract agencies’ letters reflect the concern that a loss in the ability to bill hourly may impact how they handle the cases.<sup>8</sup> The Associated Counsel for the Accused (ACA) in its response noted that the current hourly payment system for persistent offender cases allows the agency to adjust caseloads internally. It is notable that the Model’s premise is to provide funding for a sufficient number of Full Time Employees (FTE) to staff the projected number of felony cases in King County. Under the Model, contract agencies have to adjust caseloads to account for varying levels of complexity in non-persistent offender cases.

The Model bases FTE needs on total caseloads and considers all felonies in one category. An “average” felony receives one felony case credit. Under the current contract, an agency receives two felony case credits initially for murder cases and may apply for extraordinary credits as needed.<sup>9</sup> Similarly, under the proposed contract

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<sup>6</sup> Letter dated January 31, 2008 from Kevin Curtis to V. David Hocraffer; enclosed as Appendix G.

<sup>7</sup> Letter dated December 14, 2007 from Floris Mikkelsen to V. David Hocraffer; enclosed as Appendix F.

<sup>8</sup> ACA: “may result in a chilling effect on how these cases are handled” (Appendix C); WACDL: a substantial reduction with no guarantee of payment for additional work “will undoubtedly compromise the results” (Appendix G).

<sup>9</sup> For death penalty cases, the Office of the Public Defender contract (pursuant to Special Proceedings Rules – Criminal (SPRC) 2)) funds two FTE attorneys. For aggravated murder cases, the contract funds one FTE attorney.

## **Persistent Offender Contract Changes**

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change for persistent offender cases, an agency would receive three felony case credits initially and could apply for extraordinary case credits as needed.

### **B. Administrative Time**

Northwest Defenders Association (NDA), in its response letter, noted its concern for the additional administrative time which will be required to apply for extraordinary credits.

Submitting requests for extraordinary case credits does place an administrative requirement on the agencies, but the cost of extraordinary cases can be high and so these cases merit the administrative time spent both by the agency in preparing its request and OPD in reviewing the request. For example, OPD paid over \$175,000 in attorney fees for one 2004 persistent offender case, representing over 2,000 hours of attorney time (or over 165 credits). Under the proposed payment change, this would be an extraordinary case, which would be reviewed by OPD and for which the agency could receive extra credits from OPD as the case progressed; the same as all other extraordinary cases.

Two agencies' persistent offender cases fall below the median of 3.4 credits. These agencies would not generally need to apply for extraordinary credits for these cases because the proposed change initially provides each assigned persistent offender case three credits.

### **C. Guidelines for Award of Extraordinary Credits**

Washington Association of Criminal Defense Lawyers and ACA, in their response letters, expressed concern regarding a lack of guidelines for awarding extraordinary credits.

As noted, OPD currently awards extraordinary credits in felony cases which are extraordinary. The 2008 contract language (set out below) contains guidelines for the award of these credits in specific case types:

- Extraordinary juvenile felony offender
- Dependency, termination of parental rights
- RCW 26.33.110 contested adoption termination
- Reinstatement of parental rights
- Murder
- Persistent offender



## Persistent Offender Contract Changes

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- All adult felony cases shall be given extra credits if the nature of the case requires such extra credits, based upon a written application from the Agency for additional credits and negotiation between OPD and the Agency.

Factors entering into the awarding of extra credits include, but are not limited to:

- Seriousness of the charges
- Amount and complexity of evidence
- Number of witnesses
- Unusual legal issues
- Number of defendants
- Whether there is a plea, bench trial or jury trial
- Number of pre-trial motions or hearings needed
- Severity of the consequences
- Actual length of trial.<sup>10</sup>

The Agency application must be specific about the work to be done or completed to date, the estimated length of time to perform the work, and the personnel that will be assigned to perform the work. Initial OPD response to the Agency indicating approval or denial and including any requests for additional information is made within five business days from OPD receipt of Agency application.

The proposed contract change will allow OPD to review a request and allocate extraordinary case credits in extraordinary cases applying guidelines uniformly across all contract agencies, in keeping with the objectives of the Public Defense Payment Model.

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<sup>10</sup> Excerpts from 2008 Office of the Public Defender agency contract, Exhibit V, Attachment A

## Persistent Offender Contract Changes

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### **D. Caseload for Persistent Offender Cases**

The Washington Defender Association (WDA) noted in its response letter that it had adopted a caseload standard of eight open persistent offender cases per each pair of attorneys (or four open cases per year for one attorney).<sup>11</sup> This caseload standard has not been adopted by other organizations.

The Office of the Public Defender proposed contract change is consistent with current public defense felony caseload standards, adopted by the Washington State Bar Association (WSBA) and the American Council of Chief Defenders (ACCD). The American Council of Chief Defenders performed comprehensive reviews of caseload standards in 2007 and did not establish a separate caseload standard for persistent offender cases, and the WSBA Committee on Public Defense declined to adopt the persistent offender caseload standard set forth by the WDA. Both the WSBA and the ACCD reaffirmed the felony caseload standard of 150 felony cases per year per attorney, and both recommended that individual jurisdictions examine their particular situations and use case weighting where appropriate.

The WSBA's report said that "[c]aseload factors vary widely among jurisdictions, and case weighting is often appropriate and should be encouraged." Similarly, the ACCD stated that "[o]ne system that can be utilized to arrive at an appropriate reduced maximum limit for complex cases is a case credit system that allocates multiple credits for specific types of cases and recognizes that lawyers can handle fewer of those cases per year." As noted above, under the OPD current contract, murder cases are weighted initially at two felony case credits, and under the proposed contract change, persistent offender cases would be weighted initially at three felony case credits.

Standard One (Compensation) of the WSBA Standards for Public Defense states that contracts should provide for payment over and above normal contract payments for "cases which require an extraordinary amount of time and preparation." The Office of the Public Defender's current contract provision to pay extraordinary case credits for extraordinary cases and OPD's proposed change to the payment procedure for persistent offender cases meets this requirement.

### **5. Office of the Public Defender's proposal is consistent with the current information about the application of the persistent offender laws.**

When the Persistent Offender law was passed in 1993 mandating a sentence of life without possibility of parole for three strike cases, it was anticipated that far more than 17percent of the cases would go to trial.

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<sup>11</sup> Letter dated February 13, 2008 from Craig Platt to V. David Hocraffer; enclosed as Appendix H.

## Persistent Offender Contract Changes

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In 1994, OPD decided initially to give a felony case credit for every 12.1 hours of work “from already contracted felony credits” up to 6.25 credits per month per case. The Office of the Public Defender noted that this payment would continue “only so long as there is available credit resource. . .” and OPD and the agencies would execute a contract modification when the credit “value” of these cases was established<sup>12</sup>. Over the ensuing years, various credit and hourly allocations have been used. The status quo reimbursement system is essentially hourly, with no maximum number of hours established. Office of the Public Defender’s proposed change would not limit credits for a case if the agency justifies the need.

An interim report prepared in 1994 by the incumbent Executive reflects initial expectations that every persistent offender case would go to trial<sup>13</sup>, and 1995 data indicated that in fact 70 percent of the cases went to trial. By contrast, OPD’s 2007 review of 200 King County persistent offender cases indicated that fewer than 17 percent of the cases went to trial, and over 90 percent of the persistent offender cases resulted in sentences less than life without possibility of parole.

These results are consistent with the growing recognition that not all persistent offender cases warrant a sentence of life without possibility of parole. Fifty percent of the cases which were reviewed by OPD were charged as robberies or assaults – cases which can vary from the most serious of crimes with significant injuries from the use of a weapon to less serious crimes, such as a “shop lift gone bad” where an unarmed defendant stealing food from a supermarket resists the restraint of a security guard and is charged with a second degree robbery.

King County Prosecutor Dan Satterberg has ordered his staff to review early persistent offender cases for cases which may not have deserved a life sentence. He noted that second degree robbery and second degree assault (strike crimes) “can apply to a wide range of conduct, some very serious, some not.”

Given this experience and information regarding persistent offender cases, OPD reexamined the hourly payment for these cases. The proposed change to the method of payment for persistent offender cases is consistent with the current information about the application of the persistent offender laws.

**6. Financial impact on the agencies and on their legal representation services in these cases should be negligible, if agency management consistently applies for extraordinary case credits in extraordinary persistent offender cases.**

The budget proviso asked for the financial impacts on each agency of the proposal and the expected impact on resources for defense.

The Office of the Public Defender asked for the same level of appropriation for these cases in its 2008 budget as in 2007. No reduction in payments for these cases was projected. It should

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<sup>12</sup> Memo dated April 9, 1994 from James C. Crane to Agency Directors; enclosed as Appendix I

<sup>13</sup> Letter dated September 9, 1994 from Gary Locke to Kent Pullen; enclosed as Appendix J

## Persistent Offender Contract Changes

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be noted that OPD has no way to review the “extraordinariness” of past persistent offender cases billed on an hourly basis under the current system. Under the proposed change, agency management will need to be diligent in applying for extraordinary case credits in extraordinary persistent offender cases.

Financial impacts on the agencies are difficult to forecast. As ACA pointed out in its response letter, an agency does not know how many persistent offender cases it will be assigned in a year, nor does it know how complex the assigned cases will be<sup>14</sup>.

All agencies noted that a cap of three credits per persistent offender case would be inequitable. However, the three credit initial payment for these cases is not a cap it is a floor. Office of the Public Defender’s proposal does not limit the payment for these cases to three credits. Three felony credits are initially awarded at case assignment and agencies can request extraordinary case credits as necessary and upon OPD review.

**7. The proposed contract change in payment method for persistent offender cases does not change the Public Defense Payment Model. The proposed change is consistent with the Model.**

The proposed change is to award three felony case credits at case assignment – three times the initial credit given for a standard felony case – and to give agencies the opportunity to request extraordinary credits for extraordinary cases. This procedure addresses the variety in these cases and allows for monitoring payments for extraordinary persistent offender cases. It is similar to the current contract procedure of giving two credits for a murder case with the opportunity for extraordinary credits. Both give multiple credits to weight the cases, and both procedures rely on the Public Defense Payment Model, which established credit caseloads and the method to calculate the value of a credit.

The proposed change in payments for persistent offender cases does not change the Public Defense Payment Model. The proposed change is consistent with the Model and implements the objectives of the Model adopted by the council, by treating cases types uniformly across all agencies.

**8. Summary**

The enclosed motion provides for the ability of OPD to modify payment for persistent offenders to bring it in line with other similar felony case payments.

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<sup>14</sup> Letter dated December 5, 2007 from David Chapman to V. David Hocraffer; enclosed as Appendix C.

**APPENDIX A**



**KING COUNTY**  
**Signature Report**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**July 18, 2005**

**Motion 12160**

**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.

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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

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**Motion 12160**

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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

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**Motion 12160**

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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

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**Motion 12160**

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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

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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.

---

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**

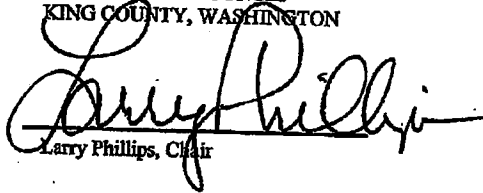
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121 councilmember and the lead staff of the budget and fiscal management committee or its  
122 successor.  
123

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

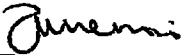
Yes: 13 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. Dunn, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms. Patterson and Mr. Constantine  
No: 0  
Excused: 0

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.

<b><u>Case Area</u></b>	<b><u>Caseload Standard</u></b>
• 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**

ATTACHMENT A

July 13, 2005

12160

**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 COLA<sup>1</sup> 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.

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

**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.

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

**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.

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

<sup>1</sup> COLA = Cost of living adjustment. The model uses the same COLA rate applied to most County employees; the COLA increase is 90% of the change in the September to September national consumer price index (CPI-W), with a floor of 2.00%.

**ATTACHMENT A**

**July 13, 2005**

**12160**

**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.

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

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

**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.

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

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

**STEP 3. Calculate the Total Price Per Credit**

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

**ATTACHMENT A**

**July 13, 2005**

**12160**

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 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.

$$(\text{Total direct expenditures}) \times \% \text{ Rate} = \text{Total Indirect Admin/Overhead Allocation}$$

**STEP 5. Rent Allocation:**

**A. Calculate the number of FTEs required to manage the 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:  $(B2 + B3) \times 0.25$ .

$$(B2 + B3 + B4) = \text{Total Square Footage}$$

**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.

$$(\text{Average Cost Per Square Foot}) \times (\text{Total Square Footage}) = \text{Total Rent Allocation}$$



**ATTACHMENT A**

**July 13, 2005**

**12160**

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. Complete 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.

## Appendix B

### Schedule of annual updates for preparing budgets for 2007 and 2008 *A major recalculation of the basic model structure is to be completed as part of 2009 budget preparation*

#### Direct Cost - Caseload

##### Section 1 Attorney salary

- Update the Kenny salary scale 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 attrition and modify factor if warranted
- Recompute the amount of FICA commensurate with the salary amount

##### Section 2 Supervisor salary

- Update the Kenny salary scale for COLA (at county salary rate) and other changes to match PAO scale
- Recompute the amount of FICA commensurate with the salary amount

##### Section 3 Non-legal professional and clerical salaries

- 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
- Recompute the amount of FICA commensurate with the salary amount

##### Section 4 Benefits

- 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 fit amount (less amounts for industrial insurance and unemployment insurance).
- (Note: the rate used in budget preparation is an estimated rate which can be adjusted when the final rate is determined)

##### Section 5 Attorney Direct Overhead

- Apply the county COLA to the current rate per fit

##### Section 6 Non-legal Direct Overhead

- Apply the county COLA to the current rate per fit

##### Section 7 Direct Overhead - Mileage

- Apply the annual inflation rate experienced by the King County mileage rate to the current per attorney rate.

#### Direct Cost - Calendar

##### Section 8 Direct Cost Calendar

- Costs are derived from Sections 1 - 7 above.
- Specific calendar assignments should be reviewed each year to assure accuracy.

#### Indirect Cost

##### Section 9 Agency Administration

- Updates, prior to planning for 2009, will not be undertaken unless significant changes to agency operation are required.

##### Section 10 Agency Overhead

- Updates, prior to planning for 2009, will not be undertaken unless significant changes to agency operation are required.

##### Section 11 Rent

- Update the three year rolling average for square footage cost.
- Update the amount of square footage necessary based on changes in caseload.



**APPENDIX B**



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**November 16, 2007**

**Ordinance**

**Proposed No. 2007-0544.2**

**Sponsors Ferguson**

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AN ORDINANCE adopting the 2008 Annual Budget and making appropriations for the operation of county agencies and departments and capital improvements for the fiscal year beginning January 1, 2008, and ending December 31, 2008, and adopting the 2008/2009 Biennium Budget and making biennial appropriations for the operation of transit, the department of transportation director's office, transit revenue vehicle replacement, public transportation capital improvement program and public transportation construction fund for the fiscal biennium beginning January 1, 2008, and ending December 31, 2009.

**BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

**SECTION 1. Findings: The council makes the following findings of fact:**

A. King County government is responsible for providing a variety of services to all residents of the county. These include: regional services, such as criminal justice, public health, wastewater treatment and public transportation; subregional services

---

**Ordinance**

---

861 the council directs that the executive seek partnerships with the cities to develop and send  
862 to the council a plan, prior to July 1, 2008, that shows options to expand the county's  
863 current jail facilities and/or build new facilities in partnership with the cities.

864 The plan required to be submitted by this proviso must be filed in the form of 11  
865 copies with the clerk of the council, who will retain the original and will forward copies  
866 to each councilmember and to the lead staff for the law, justice and human services  
867 committee, or its successor.

868 SECTION 52. OFFICE OF THE PUBLIC DEFENDER - From the current  
869 expense fund there is hereby appropriated to:

870	Office of the public defender	\$39,770,059
871	The maximum number of FTEs for office of the public defender shall be:	20.75

872 **ERI EXPENDITURE RESTRICTION:**

873 Of this appropriation, funding for persistent offender cases shall be expended only  
874 under the status quo reimbursement method, until such a time as the county council has  
875 approved, by motion, a change to the existing model. The office of the public defender  
876 shall also complete a study detailing the financial impacts of any proposed change on  
877 each defender agency and define or detail any expected impact on the resources available  
878 for the defense of the accused. The department, in completing the study, shall solicit  
879 input from the defender associations and from the King County Bar Association.

880 The report and motion described in this expenditure restriction shall be submitted,  
881 in the form of 11 copies to the clerk of the council who will keep the original and  
882 distribute a copy to each councilmember and the lead staff to the law, justice and human  
883 service committee, or its successor.

---

## **APPENDIX C**



**Associated Counsel for the Accused**

110 Prefontaine Pl. S., Ste. 200  
Seattle, WA 98104  
(206) 624-8105 TDD (206) 749-4054  
FAX (206) 624-9339

V. David Hocraffer, The Public Defender  
Office of Public Defense  
Waltheu Building, Fourth Floor  
123 Third Avenue South  
Seattle, WA 98104

December 5, 2007

RE: KCC Ordinance # 2007-0544.2, Section 52, Office of the Public Defender

Dear David,

You have asked the agency to respond to "the financial impacts of any proposed change on each defender agency" regarding persistent offender cases. This will be difficult to put a number on. We do not know how many final strike cases will be assigned to ACA each year. These cases, like all of our cases, depend on many factors and situations. I will try and point out the obvious difficulty and potential risks to the agency of the proposed changes.

Currently, a final strike case is given a credit for every 12.1 hours of attorney time logged on the case. ACA assigns these cases to an experienced felony attorney. We generally do not assign two attorneys to the case. The current contracting method uses a caseload standard of 150 credits per felony attorney. When we use time as the method of getting credits on a final strike case it allows the agency to adjust caseloads internally and make appropriate adjustments on assignments to our attorneys that assures each attorney stays within the caseload standard of 150. This method allows the agency to predict contract payments for this work, which is fiscally prudent.

It is my understanding that the proposed changes would only give the agency three credits on a final strike case. If the agency needed to get additional credits we would have to apply for them under the extraordinary credit method. The problem with this approach is that it may lead to a situation of exposing the agency to undue hardship since OPD could deny extra credits and yet the case requires us to perform the work in order to fulfill our professional obligation to the client. This is an area which could result in an

unfunded mandate since the RPC's require the attorney to continue working even though we may not get paid.

I am also concerned that the policy may result in a chilling effect on how these cases are handled. If we only get three credits it could cause the attorneys and staff to try and rush these cases through the system. It might become necessary to short cut the mitigation packages or use of experts due to the arbitrary time limit of 36.3 hours per case. The change may result in more costs to the criminal justice system if there are more convictions and sentences of life in prison without parole. As you know I do not believe attorneys or staff would intentionally act in such a manner. However the perception may be there due to the method of contracting.

Under the current system the attorney and supervisor determine what is reasonable and necessary to do in these cases without the threat of not getting paid. The proposed change places the issue of what is reasonable and necessary into the hands of the Public Defender without any written guidelines as to what limits may be imposed. The proposed system allows the Public Defender to control costs without a published appeal process.

It appears that the proposed change has not been based on a valid time study, such as the Spangenberg time study done several years ago, and is only based on preliminary figures from the agencies which may not be useful. Each case is different and each agency may have a different approach to assignment and balancing of the work force. It is impossible to determine the financial impact of this change however, it is apparent that the current method has worked in many of our clients best interest based on results.

Can we identify how the proposed change will result in a better practice or result in more favorable outcomes?

Sincerely,



David Chapman  
Managing Director, ACA





**APPENDIX D**

# NORTHWEST DEFENDERS ASSOCIATION

1111 Third Avenue, Suite 200, Seattle, WA 98101  
Phone: (206) 674-4700 Fax: (206) 674-4702

**RECEIVED**

JAN 18 2008

January 14, 2008

Office of the Public Defender

V. David Hocraffer, Director  
King County Office of Public Defense  
123 Third Avenue, 4<sup>th</sup> Fl.  
Seattle, WA 98101

Re: Funding for Defense of "593" (Persistent Offender) cases

Dear Mr. Hocraffer:

The Office of Public Defense ("OPD") has proposed to cut the compensation paid by King County for the representation of defendants who, if convicted, will be sentenced to die in prison. These cases, referred to as "593" cases, are among the most challenging and high stakes cases for public defenders. Previous King County Contracts for Legal Services recognized this and paid public defender agencies one case credit for every 12.1 attorney hours spent representing a 593 client. OPD has proposed that in 2008 public defender agencies be given three case credits per 593 case, presuming 36.3 hours work. Any further credit would require proof of "extraordinary circumstances."

In response to this proposal the King County Council directed OPD to "complete a study detailing the financial impacts of any proposed change on each defender agency and define or detail any expected impact on the resources available for the defense of the accused." This letter is in response to OPD's request to the agencies for that information.

For 20 of the 24 Northwest Defenders Association ("NDA") clients whose 593 cases concluded in 2006 and 2007 the prosecutor and the judge agreed the appropriate resolution was a

dismissal of the charges, a reduction of the charge to a misdemeanor, drug treatment or sentences of two, three or five years. (See attached list of NDA Completed 593 Cases.) NDA attorneys spent a total of 4,513 hours, or an average of 188 hours on each case to achieve these results. None of this would be possible if an attorney had only 36.3 hours, or less than a week, to work on each client's case.

The Council should not approve any change in the current funding method until OPD has demonstrated how it will support the level of legal services needed in 593 cases and that it will not interpose its judgment of what legal services should, or more importantly, should not be provided to these clients. A funding model that begins with the assumption that an attorney should work for less than a week on a case where the client faces a sentence of death in prison is inadequate at best and inhumane at worst.

#### FINANCIAL IMPACT OF PROPOSED CHANGE ON NORTHWEST DEFENDERS ASSOCIATION

In the completed 593 case of State v Thomas the NDA attorney spent 248 hours working on Mr. Thomas's behalf, ultimately persuading the State to dismiss all charges. In State v Anaya the NDA attorney spent 101 hours, ultimately persuading the State that a sentence of four months in jail was the appropriate resolution of the charges. The results in these cases, and others on the attached list would not have been achieved in 36.3 hours.

Under the OPD proposal NDA would have been paid for only 20% of the 4,513 attorney hours worked on 593 cases completed in 2006 and 2007: To do all the work necessary would have required the services of two and three-quarters full-time attorneys. OPD's proposal would pay for only a half-time attorney. The stark financial choice for NDA would be to subsidize the missing attorneys or to not provide the legal services necessary for effective representation. In

2008 dollars the cost of two and a quarter felony attorneys lost under OPD's proposal is approximately \$350,000.

#### **LOSS OF RESOURCES AVAILABLE FOR THE DEFENSE OF THE ACCUSED**

The proposed cap would also undermine the quality of representation in 593 cases. With one attorney primarily dedicated to 593 cases, NDA is able to respond to erratic assignments flexibly and promptly. For example, NDA received a new 593 case in the last week of 2007. The assigned attorney spent more than seven hours on the case—meeting the client, reviewing initial discovery, talking with family members and developing a litigation plan. If the attorney had been on regular caseload and in trial or with a full schedule of hearings set for the week she would not have been available to begin work immediately.

The attorney hours and payment assumed by the OPD proposal are not sufficient to support a full-time attorney. If NDA has to guess the number of additional credits OPD might allow based on the vague standard of "extraordinary circumstances", the agency could not dedicate an experienced lawyer, able to begin work immediately, to these clients. If the agency were unable to designate one person to cover all 593 cases, the depth and experience provided by one attorney concentrating on these cases would be lost.

#### **ADMINISTRATIVE IMPACT OF PROPOSED CHANGES UPON NORTHWEST DEFENDERS ASSOCIATION**

The proposed funding change would significantly increase administrative costs and slow the progress of 593 cases. NDA's 2007 Contract with King County requires an attorney representing a 593 client to meet monthly with a supervisor to review "status of investigation, preparation and presentation of mitigation packages, legal and factual issues in the case, the

client's physical and mental status, and any plea bargaining offers." The agency presents OPD with 593 litigation plans but the attorney and her supervisor develop the plans.

OPD's proposal removes the in-office review each 593 case. Instead NDA would be paid a flat 3 credits with any further payment dependent upon OPD's assessment of "extraordinary circumstances". Rather than developing a litigation plan that fits the case the attorney must develop a plan that fits OPD's assessment of what is appropriate.

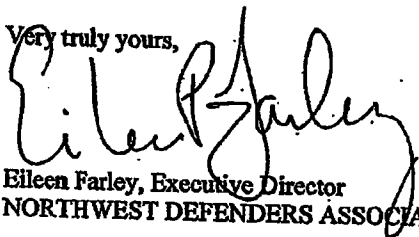
Recently when NDA's Deputy Director negotiated funding for an "Extraordinary" complex fraud case, OPD required three in-person meetings each at least 45 minutes, scheduled over a three-week period. Because NDA could not know if it would receive additional credits the attorney representing the defendant in the "Extraordinary" case continued to be assigned new cases. By the time NDA and OPD had completed funding negotiations, the attorney had received almost a full month's allocation of new cases, the bulk of which must be completed before she is free to begin work on the "Extraordinary" case. This delay slowed the case and, if the client had been in custody, would have increased jail costs. If this negotiation pattern holds true for 593 cases, the time spent negotiating for additional payment will add to jail costs.

#### CONCLUSION

In support of its proposal to reduce payments OPD distributed to King County Council staff a chart purporting to show that results in 593 cases are not improved when attorneys spend more time on such cases. OPD's claim is intuitively mistaken--careful preparation is the key to success in criminal defense as in all other pursuits. OPD's claim is also wrong on the facts. Its chart included only two results in 593 cases-a sentence to death in prison and sentences of anything less than death in prison. (OPD has not provided this chart to the public defender agencies or discussed its data or methodology.)

To a client and the client's family, a case that ends with dismissal of all charges or a short term of incarceration is completely different from a case that ends with a sentence of thirty years in prison. In OPD's chart, complete dismissal of all charges and a sentence of thirty years are treated identically. OPD's claim that the number of hours worked on a case made no difference to the outcome of the case ignores this critical difference. The Council should not approve a funding mechanism that starts from this flawed premise.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Eileen Farley". The signature is written in black ink and is positioned above the typed name and title.

Eileen Farley, Executive Director  
NORTHWEST DEFENDERS ASSOCIATION

2007 NDA chart

Case	Sentence	Atty Hrs/Credits Earned	OPD Prop'd Hrs/Credits
State v Thomas 05-1-11655-9	Case Dismissed.	248 hrs/20 credits	36.3 hours/3 credits*
State v Sledge 05-C-013130-2	Case Dismissed/Pros in Fed Crt	13.25 hrs/1 credit	36.3 hours/3 credits*
State v Anaya 05-1-12333-4	4 mos	101 hrs/8 credits	36.3 hours/3 credits*
State v Rieke 07-1-03013-8	9 mos	38 hours/3 credits	36.3 hours/3 credits*
State v M. Smith 06-1-10333-1	12 mos	69 hours/6 credits	36.3 hours/3 credits*
State v M. E. Johnson 06-1-04204-9	1 yr Susp, 58 CFTS	73.25 hours/6 credits	36.3 hours/3 credits*
State v Washington 07-1-02678-5	24 mos	71.25 hours/6 credits	36.3 hours/3 credits*
State v Hunter 04-1-01862-1	29 mos	162.66 hours/13 credits	36.3 hours/3 credits*
State v Wells 06-1-04871-3	29.75 mos (DOSA)	39 hours/3 credits	36.3 hours/3 credits*
State v Whitfield 06-1-03330-9	33 mos	123 hours/10 credits	36.3 hours/3 credits*
State v M. Davis 04-1-03362-1	36 mos	301 hours/25 credits	36.3 hours/3 credits*
State v Powell 05-1-13101-9	53 mos	108 hours/8 credits	36.3 hours/3 credits*
State v Dampier 05-1-07347-7	60 mos	207 hours/17 credits	36.3 hours/3 credits*
State v E. Davis 05-1-08893-8	67 mos	250 hours/20 credits	36.3 hours/3 credits*
State v Hadgu 04-1-00185-1	144 mos	575 hours/47 credits	36.3 hours/3 credits*

<b>Case</b>	<b>Sentence</b>	<b>Atty Hrs/Credits Earned</b>	<b>OPD Prop'd Hrs/Credits</b>
<b>State v Klincade 04-C-00637-2</b>	150 mos	125 hours/10 credits	36.3 hours/3 credits*
<b>State v Rawls 03-1-10261-6 &amp; 03-1-10372-8</b>	156 mos	285 hours/23 credits	36.3 hours/3 credits*
<b>State v Hill 04-1-06246-9</b>	180 mos	290 hours/24 credits	36.3 hours/3 credits*
<b>State v Robson 04-1-01232-1</b>	180 mos	95 hours/8 credits	36.3 hours/3 credits*
<b>State v Harmon 06-1-04840-3</b>	360 mos	357.25 hours/30 credits	36.3 hours/3 credits*
<b>State v Peterson 04-1-01862-1</b>	Life	317 hours/26 credits	36.3 hours/3 credits*
<b>State v Miller 04-1-09756-4</b>	Life	429 hours/35 credits	36.3 hours/3 credits*
<b>State v Archartz 05-1-08821-1</b>	Life	43 hours/3.5 credits	36.3 hours/3 credits*
<b>State v Greer 05-1-13605-3</b>	Life	374.75 hours/21 credits	36.3 hours/3 credits*
* Any hrs/credits above this must be "extraordinary".			





**APPENDIX E**



"Equal Justice Under The Law"

Law Offices of  
Society of Counsel Representing Accused Persons

Seattle  
1401 East Jefferson Street, Suite 200  
Seattle, Washington 98122  
(206) 322-8400 \$Fax (206) 726-3170

Kent  
420 West Harrison Street, Suite 101  
Kent, Washington 98032  
(253) 852-9460 \$Fax (253) 852-9686

David Hocraffer  
Office of the Public Defender  
123 Third Avenue  
Suite 400  
Seattle, WA 98104

January 23, 2008

RE: 593 payment structure

Dear David,

Thank you for requesting agency feedback on OPD's proposal to change how persistent offender cases are funded. In reviewing the data gathered by OPD and meeting with our attorney supervisors, I would ask that the funding model not be changed.

As to the data being relied upon by OPD, SCRAP has concern. It appears that cases that were conflicted out by one agency and assigned to another are included in the hours. For example, if OPD is says SCRAP was assigned 20 persistent offender cases and the average length of time spent on each case was 36.3 hours, this 20 includes cases that we were assigned and then debited out of without ever assigning the case to an attorney due to a conflict of interest. By including these cases in the mix, the average number of hours worked is greatly deflated and an inaccurate perception of the time necessary to these cases is created.

Additionally, SCRAP feels strongly that to change the funding model in effect violates the caseload standards as outlined in the contract, WSBA endorsed and WDA caseload standard. While the number of cases is not specifically increased, the workload is increased. King County's credit and caseload standards have been historically built upon a workload assessment — how much time is allotted for a felony case. The time to be allotted under OPD's funding change would decrease, however the work and time needed for the work would not.

Lastly, under the current funding model, only time billed is paid for. Thus if the average amount of time spent on a persistent offender case is 36.3 hours, that is all OPD would pay for. The current funding model does not have OPD paying for time that is not documented. The proposed change again appears to limit the ability of the attorney to be paid for the actual amount of work that is needed in these cases. As these are the most serious of cases due to the life sentence involved, the attorneys must not be forced to provide less service to these cases and clients.

I appreciate OPD's concern with managing its budget. However, the cost of these cases under the current funding model is significantly less than the financial and societal cost of an attorney short cutting the case and a client being sentenced to life.

There has been no information provided to indicate the necessity of changing the current funding model, other than OPD's concern that some agencies bill significantly more time. It is my position that the time billed should be analyzed and discussed with the individual agencies, rather than changing the current system for all agencies, even those where there are not concerns about the number of hours billed.

I appreciate your consideration of my stated concerns and look forward to discussing the issue further. In the meantime, please feel free to contact me should you have any questions.

Sincerely,

Anne Daly  
Director



**APPENDIX F**

DEC 14 2007

**The Defender Association**  
**810 3<sup>rd</sup> Avenue, Suite 800**  
**Seattle, Washington 98104**  
**206-447-3900**  
**FAX: 206-447-2349**  
**TTY Relay Service: 1-800-833-6384**

December 14, 2007

Mr. David Hocraffer  
Office of the Public Defender  
123 3<sup>rd</sup> Avenue South #400  
Seattle, Washington 98104

Dear David,

Thank you for requesting our views on the change proposed by OPD to the payment structure for "three strikes" cases.

As we explained in several meetings with you this fall, we believe that the proposed changes would

- result in a de facto increase in the caseload for felony lawyers; and
- substantially under-fund the work necessary to represent persistent offender clients effectively.

The only possible way to square the OPD proposal with the established record of time required, is to assume that you will freely approve additional credits with little or no extra administrative burden for the agencies. The defender offices' recent experience with OPD, in which extra credits have not been freely awarded, is not consistent with this expectation.

We are very proud of the results our lawyers have achieved for persistent offender clients. Success in persistent offender cases cannot be measured solely by counting how many defendants end up with a sentence less than life in prison. Often, such offers (less than life without parole) are available early in the case, but they are for sentences that are excessive in light of the facts of the case and the client's life circumstances. A defendant would only consider such a resolution if the alternative actually is life without parole. The challenge for the defense is to eliminate any valid threat of a life without parole sentence through legal research, factual investigation and challenging whether prior offenses are valid "strikes," or to present sufficiently compelling mitigation that the prosecutor's offer improves for equitable reasons.

68.5% of our clients have had cases dismissed or pleaded to misdemeanors or non-strike felonies with standard range sentences, despite that the prosecutor was negotiating

Mr. David Hocrafter  
December 14, 2007  
Page 2

initially with the threat of life without parole. We have required an average of 13 credits per case per year to achieve those results according to OPD's own figures - well over four times the presumptive compensation you propose. (Another office required more time per case per year.)

No argument has been advanced that we did not require the time we actually spent to achieve the results we have documented. Unless it can be established that the same results can be achieved in less than one quarter the time, the OPD proposal necessarily under-funds the work required to achieve these results.

The financial impact on our agency would be untenable. We would not receive anywhere near the revenue needed to support the work of the lawyers on these cases, and we could not ethically curtail their work because we received too little compensation to support their hours.

I attach some data on our persistent offender cases which support our position.

I would appreciate the chance to meet with you and Jackie MacLean early in 2008 to address the need to preserve the present method of compensating work on persistent offender cases.

Sincerely,



Floris Mikkelsen  
Director

Enclosures

## **TDA Average 593 Credits Per Year**

*Note on "split" cases: For a variety of reasons, a significant number of I-593 cases are "split" between more than one agency. Some of these cases are split early, some in the middle, and some immediately before sentencing. Arguably, the bulk of billable work on a case is done early, in the preparatory stages. However, with the information currently available, there is no way to accurately "pro-rate" the split portions. For simplicity's sake, split cases are handled in this report by splitting them into portions calculated by each agency's percentage of the total number of days spent on the case. This is not the most elegant, or accurate, solution, but may be the best way to present this material at the moment with the information at hand.*

**2000 Cases (Completed Only)**

TDA Total Credits: 251.82

TDA Total Cases: 18

Average Credits Per Case: 13.99

Total Cases Result LWOP: 3

Percentage Result LWOP: 16.66%

Total Cases Result Exceptional Sentence: 5

Percentage Result Exceptional Sentence: 27.77%

Total Cases Result Standard Range: 9

Percentage Result Standard Range: 50%

Total Cases Result Misdemeanor: 1

Percentage Result Misdemeanor: 5.55%



**2001 Cases (Completed Only)**

TDA Total Credits: 151.76

TDA Total Cases: 16.03

Average Credits Per Case: 9.46

Total Cases Result LWOP: 2

Percentage Result LWOP: 12.47%

Total Cases Result Exceptional Sentence: 7

Percentage Result Exceptional Sentence: 43.66%

Total Cases Result Standard Range: 5

Percentage Result Standard Range: 31.19%

Total Cases Result Misdemeanor: 1.03

Percentage Result Misdemeanor: 6.42%

Total Cases Result Dismissed: 1

Percentage Result Dismissed: 6.23%

**2002 Cases (Completed Only)**

**TDA Total Credits: 277.41**

**TDA Total Cases: 11.88**

**Average Credits Per Case: 23.35**

**Total Cases Result LWOP: 2**

**Percentage Result LWOP: 16.83%**

**Total Cases Result Exceptional Sentence: 2**

**Percentage Result Exceptional Sentence: 16.83%**

**Total Cases Result Standard Range: 6.88**

**Percentage Result Standard Range: 57.91%**

**Total Cases Result Misdemeanor: 1**

**Percentage Result Misdemeanor: 8.41%**

**2003 Cases (Completed Only)**

TDA Total Credits: 441.02

TDA Total Cases: 10.2

Average Credits Per Case: 43.23

Total Cases Result LWOP: 2

Percentage Result LWOP: 19.60%

Total Cases Result Standard Range: 6.2

Percentage Result Standard Range: 60.78%

Total Cases Result Misdemeanor: 1

Percentage Result Misdemeanor: 9.80%

Total Cases Result Acquittal: 1

Percentage Result Acquittal: 9.80%

**2004 Cases (Completed Only)**

TDA Total Credits: 558.49

TDA Total Cases: 13.1

Average Credits Per Case: 42.63

Total Cases Result LWOP: 1.49

Percentage Result LWOP: 11.37%

Total Cases Result Exceptional Sentence: 4.61

Percentage Result Exceptional Sentence: 35.19%

Total Cases Result Standard Range: 7

Percentage Result Standard Range: 53.43%

**2005 Cases (Completed Only)**

TDA Total Credits: 404.37

TDA Total Cases: 13.58

Average Credits Per Case: 29.77

Total Cases Result LWOP: 0.77

Percentage Result LWOP: 5.6%

Total Cases Result Exceptional Sentence: 3.83

Percentage Result Exceptional Sentence: 28.20%

Total Cases Result Standard Range: 6.98

Percentage Result Standard Range: 51.39%

Total Cases Result Misdemeanor: 2

Percentage Result Misdemeanor: 14.72%

**2006 Cases (Completed Only)**

TDA Total Credits: 158.12

TDA Total Cases: 10

Average Credits Per Case: 15.81

Total Cases Result LWOP: 1

Percentage Result LWOP: 10%

Total Cases Result Exceptional Sentence: 1

Percentage Result Exceptional Sentence: 10%

Total Cases Result Standard Range: 6

Percentage Result Standard Range: 60%

Total Cases Result Misdemeanor: 1

Percentage Result Misdemeanor: 10%

Total Cases Result Acquittal: 1

Percentage Result Acquittal: 10%

**TDA TOTALS 2000-2004 (Completed Cases Only)**

Total Credits: 1680.5

Total Cases: 69.21

Average Credits Per Case: 24.28

Total Cases Result LWOP: 10.49

Percentage Result LWOP: 15.15%

Total Cases Result Exceptional Sentence: 18.61

Percentage Result Exceptional Sentence: 26.88%

Total Cases Result Standard Range: 34.08

Percentage Result Standard Range: 26.88

Total Cases Result Misdemeanor: 4.03

Percentage Result Misdemeanor: 5.8%

Total Cases Result Acquittal: 1

Percentage Result Acquittal: 1.44%

Total Cases Result Dismissal: 1

Percentage Result Dismissal: 1.44%

TDA Totals 2000-2004

	251.82	151.76	277.41	441.02	558.49	1680.5
	18	16.03	11.88	10.2	13.1	69.21
	13.99	9.46	23.35	43.23	42.83	24.28
	3	2	2	2	1.49	10.49
	16.66	12.47	16.83	19.6	11.37	15.15%
	5	7	2	0	4.61	18.61
	27.77	43.66	16.83	0	35.19	26.88%
	9	5	6.88	6.2	7	34.08
	50	31.19	57.91	60.78	53.43	49.24%
	1	1.03	1	1	0	4.03
	5.55	6.42	8.41	9.8	0	5.80%
	0	0	0	1	0	1
	0	0	0	9.8	0	1.44%
	0	1	0	0	0	1
	0	6.23	0	0	0	1.44%



**TDA TOTALS 2001-2005 (Completed Cases Only)**

**Total Credits: 1680.5**

**Total Cases: 69.21**

**Average Credits Per Case: 24.28**

**Total Cases Result LWOP: 8.26**

**Percentage Result LWOP: 12.74%**

**Total Cases Result Exceptional Sentence: 17.44**

**Percentage Result Exceptional Sentence: 26.91%**

**Total Cases Result Standard Range: 32.06**

**Percentage Result Standard Range: 49.48%**

**Total Cases Result Misdemeanor: 5.03**

**Percentage Result Misdemeanor: 7.76%**

**Total Cases Result Acquittal: 1**

**Percentage Result Acquittal: 1.54%**

**Total Cases Result Dismissal: 1**

**Percentage Result Dismissal: 1.54%**

TDA Totals 2001-2005

	2001	2002	2003	2004	2005	Totals
	151.78	277.41	441.02	558.49	404.37	1833.05
	16.03	11.88	10.2	13.1	13.58	64.79
	9.46	23.35	43.23	42.63	29.77	28.29
	2	2	2	1.49	0.77	8.26
	12.47	16.83	19.6	11.37	5.6	12.74%
	7	2	0	4.81	3.83	17.44
	43.66	16.83	0	35.19	28.2	26.91%
	5	6.88	6.2	7	6.98	32.06
	31.19	57.91	60.78	53.43	51.39	49.48%
	1.03	1	1	0	2	5.03
	6.42	8.41	9.8	0	14.72	7.76%
	0	0	1	0	0	1
	0	0	9.8	0	0	1.54%
	1	0	0	0	0	1
	6.23	0	0	0	0	1.54%

**TDA TOTALS 2002-2006 (Completed Cases Only)**

**Total Credits: 1680.5**

**Total Cases: 69.21**

**Average Credits Per Case: 24.28**

**Total Cases Result LWOP: 7.26**

**Percentage Result LWOP: 12.35%**

**Total Cases Result Exceptional Sentence: 11.44**

**Percentage Result Exceptional Sentence: 19.46%**

**Total Cases Result Standard Range: 33.06**

**Percentage Result Standard Range: 56.26%**

**Total Cases Result Misdemeanor: 5**

**Percentage Result Misdemeanor: 8.5%**

**Total Cases Result Acquittal: 2**

**Percentage Result Acquittal: 3.4%**

**Total Cases Result Dismissal: 0**

**Percentage Result Dismissal: 0%**

TDA Totals 2002-2006

	2002	2003	2004	2005	2006	Totals
	277.41	441.02	558.49	404.37	158.12	1839.41
	11.88	10.2	13.1	13.58	10	58.76
	23.35	43.23	42.63	29.77	15.81	31.3
	2	2	1.49	0.77	1	7.28
	16.83	19.6	11.37	5.6	10	12.35%
	2	0	4.61	3.83	1	11.44
	16.83	0	35.19	28.2	10	19.46%
	6.88	6.2	7	6.98	6	33.06
	67.91	60.78	53.43	51.39	60	56.26%
	1	1	0	2	1	5
	8.41	9.8	0	14.72	10	8.50%
	0	1	0	0	1	2
	0	9.8	0	0	10	3.40%
	0	0	0	0	0	0
	0	0	0	0	0	0.00%

Sheet1

	277.41	441.02	558.49	404.37	158.12	Totals
	11.88	10.2	13.1	13.58	10	1839.41
	23.35	43.23	42.63	29.77	15.81	58.76
						31.3
	2	2	1.49	0.77	1	7.26
	16.83	19.6	11.37	5.6	10	12.35%
	2	0	4.61	3.83	1	11.44
	16.83	0	35.19	28.2	10	19.46%
	6.88	6.2	7	6.98	6	33.06
	57.91	60.78	53.43	51.39	60	58.28%
	1	1	0	2	1	5
	8.41	9.8	0	14.72	10	8.50%
	0	1	0	0	1	2
	0	9.8	0	0	10	3.40%
	0	0	0	0	0	0
	0	0	0	0	0	0.00%

### Trial Statistics on 593 Cases

Total number of TDA 593 cases: 185

Total number of TDA 593 cases taken to trial by TDA: 23

Percentage of total TDA 593 cases taken to trial by TDA: 12.43%

Total number of TDA 593 cases 2001-2005: 87

Total number of TDA 593 cases 2001-2005 taken to trial by TDA: 8

Percentage of total TDA 593 cases 2001-2005 taken to trial by TDA: 9.1%

### Most Common Original Charge By Charge Year

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
1. ASLT2 (5)	ASLT2 (5)	ROBB2 (6)	ROBB2 (5)	ASLT2 (5)
2. ROBB1 (4)	ROBB2 (3)	ASLT2 (5)	ROBB1 (4)	ROBB2 (2)
3. ROBB2 (3)	RAPE1 (2)	ROBB1 (4)	BURGI (3)	Unclear

### Most Common Plea/Trial Charge By Year

<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
1. THFT1 (4)	Unclear	THFT1 (5)	THFT1 (4)	THFT1 (3)
2. ASLT3 (3)	Unclear	ASLT3 (3)	ROBB1 (3)	Unclear
3. Unclear	Unclear	Unclear	Unclear	Unclear

### Racial Disparity

Total number of KC LWOPs (to date): 110

Total number of KC LWOPs with any race confirmed: 101

Total number KC LWOPs with race confirmed Black: 59

Percentage of total KC LWOPs with race confirmed Black: 58.41%

Total number of KC LWOPs with race confirmed Black and at least one instance of ROBB2: 30

Percentage of total KC LWOPs with race confirmed Black and at least one instance of ROBB2: 29.70%

Total number of KC LWOPs with race confirmed Hispanic: 1

Percentage of total KC LWOPs with race confirmed Hispanic: 0.009%

Total number of KC LWOPs with race confirmed Native American: 1

Percentage of total KC LWOPs with race confirmed Nat. American: 0.009%

## **APPENDIX G**

**WACDL** Washington Association of  
Criminal Defense Lawyers

Kevin J. Curtis  
President

Teresa Mathis  
Executive Director

**RECEIVED**

FEB 04 2008

Office of the Public Defender

January 31, 2008

Mr. V. David Hocraffer  
King County Office of Public Defense  
Waltheu Building  
123 Third Ave. S., Suite 400  
Seattle, WA 98104

Dear Mr. Hocraffer:

Thank you for requesting WACDL's input regarding your agency's proposed changes to offender case payments. To properly analyze the issues presented and prepare this submission, WACDL formed a sub-committee which included, among others, President Kevin Curtis, Executive Director Teresa Mathis, and Board of Governor member Mark W. Prothero (who is WACDL's liaison with the King County Office of Public Defense (KCOPD)). We have carefully reviewed the proposed change and during this process solicited input from The Defender Association (TDA), Associated Counsel for the Accused (ACA), Society of Counsel Representing Accused Persons (SCRAP), and Northwest Defenders Association (NDA). In addition, the committee obtained information from members of the private bar who have accepted appointments from KCOPD in persistent offender cases.

After reviewing all of the information, WACDL opposes the proposed contract changes; in large part because they provide no assurance to the indigent defense agencies that they will receive adequate and necessary compensation for three-strike cases. WACDL believes that the proposed change falls well below providing adequate payment for these cases. The data we have received from the indigent defense agencies and private counsel uniformly demonstrate that persistent offender cases require far more time than the presumptive 36.3 hours proposed by OPD. We have reviewed the letter sent by the directors to the King County Council, which documents that the average hours worked by the agencies totaled *no less* than 186 hours per case. (See Letter to King Counsel Members, enclosed as attachment # 1) The proposed change would assure compensation for only 20% of that time.

810 Third Avenue  
Suite 208  
Seattle, WA 98104  
T (206) 623-1302  
F (206) 623-4257  
info@wacdl.org  
www.wacdl.org



January 31, 2008  
Page 2

WACDL recognizes that KCOPD proposes to award additional credit on a case-by-case basis. However, the contract language itself fails to list the circumstances under which the agencies can expect to receive credit; provides no standards by which the agencies can determine whether they will be compensated once they complete 36.3 hours; and provides no mechanism for resolving disputes regarding these issues or timelines for disputed payments or credits. Unfortunately, this would place the agencies in the untenable position of assigning attorneys to persistent offender cases with no assurance of appropriate compensation. There can be little question that the indigent defense agencies have produced high quality work and achieved significant results in litigating three-strikes cases. TDA, for example, has reported an 88% success rate in obtaining reductions to non-persistent offender cases. (See "The Defender Association Request of Council," enclosed as attachment # 2). NDA similarly obtained reductions in twenty of their twenty-four persistent offender cases. (See Letter of Eileen Farley to KCOPD, enclosed as attachment # 3). A substantial potential reduction in compensation, with no guarantees of payment for additional work done, will undoubtedly compromise these results.

As you well recognize, three-strike cases are among the most serious and complex cases attorneys can be asked to litigate. The consequences for the clients are among the most severe. Obviously, other than death penalty cases, there are no cases with such an extreme consequence – the defendant will live in prison until death. Every defendant in that situation is entitled to the highest quality representation possible. Adequate compensation is a necessary prerequisite for effective representation. We know that the King County Office of Public Defense feels the same way and will continue to strive toward that goal.

WACDL respectfully requests that KCOPD withdraw the proposed contract change and continue to compensate persistent offender cases in the same manner as was done under the 2007 contract.

Sincerely,

  
Kevin Curtis  
President

Associated Counsel for the Accused (ACA)  
Northwest Defender Association (NDA)  
Society of Council (SCRAP)  
The Defender Association (TDA)

November 14, 2007

King County Council Members  
King County Courthouse  
516 Third Ave.  
Seattle, WA 98104

RE: Request For Proviso To Retain Current Payment Structure For  
Persistent Offender "Three Strikes" Cases

Dear Council Members:

We are writing to Council members to request a proviso ensuring that the current funding structure for Public Defense work on persistent offender ("three strikes") cases be maintained until there is an opportunity for it to be considered by outside experts. These are the most serious cases other than Death Penalty cases. All four of the King County defender agencies share the view that OPD's proposed change in funding structure jeopardizes quality representation in this important area.

The Council has been supportive of Public Defense in the past. We believe this is an important policy issue and not a routine contract matter. There is no equal bargaining power with OPD; agencies cannot reject a provision in one area without jeopardizing their work for thousands of indigent clients in other areas. Thus, the Council plays an important role in ensuring that the county's public defense policy is adhered to in the annual contracting process. The agencies have been shown to be correct in the past when we identified areas in which OPD contract proposals would have undermined the quality of representation that is important to the County as a matter of policy.

Data shared with us by the Council show that the agencies average over 185 hours per three strikes case. Under the current system, the agencies are compensated on an hourly basis for work actually done; OPD reviews itemized bills monthly. Under OPD's proposal to begin in 2008, agencies would receive a presumptive payment for just 36.3 hours per case -- a presumptive average reduction of 80%. While OPD says the agencies can apply for extra compensation in extraordinary cases, the agencies' experience is that such applications are often not granted. This makes assigning the case when it is received difficult because the amount of time that will be compensated is unknown.

Despite requests, OPD did not share with us the data they provided to the Council showing median credits (one credit = 12.1 hours) billed by the agencies on these cases. We only obtained those data this week from the Council. The data from OPD raise more questions than they answer. The median figure is much lower than the average figure and is therefore not a helpful estimate of the time needed on these cases.

Attachment 1

There are other significant gaps in the information OPD has provided to justify this major shift.

In 2005, OPD experimented with a presumptive 8 credits for a three strikes case (instead of the 3 now being suggested). That became a nightmare to manage both for the agencies and for OPD. After one year, OPD requested that we return to the 1 credit per 12.1 hours credit which had been the policy for years.

OPD's proposed funding change will alter the model of funding that the Council has been committed to. When the 3 year funding model was created, 593 cases were being compensated at the rate of 1 credit for 12.1 hours of work. To change the current approach will change the model as currently designed and functionally increase the workload for felony attorneys. We ask the Council to continue to protect our work in this area by setting policy direction for OPD.

We ask that you offer a proviso that retains the existing payment structure until a study with broad community, bar association, and agencies participation. An impartial review of the required work in this area may be needed, but it should take place before the current successful system and 3 year model is changed. We welcome any impartial review of the quality of our work.

Thank you for your continued support of the work of the public defense agencies do on behalf of indigent clients.

David Chapman  
David Chapman *per phone*  
ACA Managing Director *gpc*

Eileen Farley  
Eileen Farley *per phone*  
NDA Executive Director

Anne Daly  
Anne Daly *per phone*  
SCRAP Executive Director *gpc*

Floris Mikkelsen  
Floris Mikkelsen  
TDA Executive Director

**The Defender Association**  
**810 3<sup>rd</sup> Avenue, Suite 800, Seattle, Washington 98104**  
**206.447-3900**

**The Defender Association Request of Council**

**Floris Mikkelsen, Director**  
**November 1, 2007**

**Request:** Retain current three year model for funding public defense representation of individuals facing mandatory life sentences.

**Currently:** Defender agencies are paid on a credit system based on hourly work. Payment is for actual work done. Representation is tailored to the individual client and his/her case.

**OPD Proposed Change for 2008:** Presumptively three credits total. Only "extraordinary circumstances" will warrant additional payment. However, results show that the average case requires more than three credits.

**All Agencies Currently Average More Than Three Credits Per Life Case\***

	2001	2003	2005	Average Credits Per Case Per Year
ACA	8.5	6.18	11.3	8.56
NDA	18.75	9.9	11.44	15.14
SCRAP	8.6	9.32	5.26	6.26
TDA	11.84	10.57	14.14	13.06

\*Source: Office of Public Defense

**The Defender Association Life Sentence Case Results 2002-2006**  
**Total Number of Cases: 59**

<b>Success Rate 88%</b>		
	Acquittal, Misdemeanor, Dismissal or Standard Range Resolution	68.5%
	Non-Third Strike with Higher Sentence	19.5%
Life Convictions		12%

**Attachment 2**

## NORTHWEST DEFENDERS ASSOCIATION

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1111 Third Avenue, Suite 200, Seattle, WA 98101  
Phone: (206) 674-4700 Fax: (206) 674-4702

January 14, 2008

V. David Hocraffer, Director  
King County Office of Public Defense  
123 Third Avenue, 4<sup>th</sup> Fl.  
Seattle, WA 98101

Re: Funding for Defense of "593" (Persistent Offender) cases

Dear Mr. Hocraffer:

The Office of Public Defense ("OPD") has proposed to cut the compensation paid by King County for the representation of defendants who, if convicted, will be sentenced to die in prison. These cases, referred to as "593" cases, are among the most challenging and high stakes cases for public defenders. Previous King County Contracts for Legal Services recognized this and paid public defender agencies one case credit for every 12.1 attorney hours spent representing a 593 client. OPD has proposed that in 2008 public defender agencies be given three case credits per 593 case, presuming 36.3 hours work. Any further credit would require proof of "extraordinary circumstances."

In response to this proposal the King County Council directed OPD to "complete a study detailing the financial impacts of any proposed change on each defender agency and define or detail any expected impact on the resources available for the defense of the accused." This letter is in response to OPD's request to the agencies for that information.

For 20 of the 24 Northwest Defenders Association ("NDA") clients whose 593 cases concluded in 2006 and 2007 the prosecutor and the judge agreed the appropriate resolution was a

Attachment 3

dismissal of the charges, a reduction of the charge to a misdemeanor, drug treatment or sentences of two, three or five years. (See attached list of NDA Completed 593 Cases.) NDA attorneys spent a total of 4,513 hours, or an average of 188 hours on each case to achieve these results. None of this would be possible if an attorney had only 36.3 hours, or less than a week, to work on each client's case.

The Council should not approve any change in the current funding method until OPD has demonstrated how it will support the level of legal services needed in 593 cases and that it will not interpose its judgment of what legal services should, or more importantly, should not be provided to these clients. A funding model that begins with the assumption that an attorney should work for less than a week on a case where the client faces a sentence of death in prison is inadequate at best and inhumane at worst.

#### FINANCIAL IMPACT OF PROPOSED CHANGE ON NORTHWEST DEFENDERS ASSOCIATION

In the completed 593 case of State v Thomas the NDA attorney spent 248 hours working on Mr. Thomas's behalf, ultimately persuading the State to dismiss all charges. In State v Anaya the NDA attorney spent 101 hours, ultimately persuading the State that a sentence of four months in jail was the appropriate resolution of the charges. The results in these cases, and others on the attached list would not have been achieved in 36.3 hours.

Under the OPD proposal NDA would have been paid for only 20% of the 4,513 attorney hours worked on 593 cases completed in 2006 and 2007. To do all the work necessary would have required the services of two and three-quarters full-time attorneys. OPD's proposal would pay for only a half-time attorney. The stark financial choice for NDA would be to subsidize the missing attorneys or to not provide the legal services necessary for effective representation. In

2008 dollars the cost of two and a quarter felony attorneys lost under OPD's proposal is approximately \$350,000.

#### **LOSS OF RESOURCES AVAILABLE FOR THE DEFENSE OF THE ACCUSED**

The proposed cap would also undermine the quality of representation in 593 cases. With one attorney primarily dedicated to 593 cases, NDA is able to respond to erratic assignments flexibly and promptly. For example, NDA received a new 593 case in the last week of 2007. The assigned attorney spent more than seven hours on the case--meeting the client, reviewing initial discovery, talking with family members and developing a litigation plan. If the attorney had been on regular caseload and in trial or with a full schedule of hearings set for the week she would not have been available to begin work immediately.

The attorney hours and payment assumed by the OPD proposal are not sufficient to support a full-time attorney. If NDA has to guess the number of additional credits OPD might allow based on the vague standard of "extraordinary circumstances", the agency could not dedicate an experienced lawyer, able to begin work immediately, to these clients. If the agency were unable to designate one person to cover all 593 cases, the depth and experience provided by one attorney concentrating on these cases would be lost.

#### **ADMINISTRATIVE IMPACT OF PROPOSED CHANGES UPON NORTHWEST DEFENDERS ASSOCIATION**

The proposed funding change would significantly increase administrative costs and slow the progress of 593 cases. NDA's 2007 Contract with King County requires an attorney representing a 593 client to meet monthly with a supervisor to review "status of investigation, preparation and presentation of mitigation packages, legal and factual issues in the case, the

client's physical and mental status, and any plea bargaining offers." The agency presents OPD with 593 litigation plans but the attorney and her supervisor develop the plans.

OPD's proposal removes the in-office review each 593 case. Instead NDA would be paid a flat 3 credits with any further payment dependent upon OPD's assessment of "extraordinary circumstances". Rather than developing a litigation plan that fits the case the attorney must develop a plan that fits OPD's assessment of what is appropriate.

Recently when NDA's Deputy Director negotiated funding for an "Extraordinary" complex fraud case, OPD required three in-person meetings each at least 45 minutes, scheduled over a three-week period. Because NDA could not know if it would receive additional credits the attorney representing the defendant in the "Extraordinary" case continued to be assigned new cases. By the time NDA and OPD had completed funding negotiations, the attorney had received almost a full month's allocation of new cases, the bulk of which must be completed before she is free to begin work on the "Extraordinary" case. This delay slowed the case and, if the client had been in custody, would have increased jail costs. If this negotiation pattern holds true for 593 cases, the time spent negotiating for additional payment will add to jail costs.

#### CONCLUSION

In support of its proposal to reduce payments OPD distributed to King County Council staff a chart purporting to show that results in 593 cases are not improved when attorneys spend more time on such cases. OPD's claim is intuitively mistaken—careful preparation is the key to success in criminal defense as in all other pursuits. OPD's claim is also wrong on the facts. Its chart included only two results in 593 cases—a sentence to death in prison and sentences of anything less than death in prison. (OPD has not provided this chart to the public defender agencies or discussed its data or methodology.)



To a client and the client's family, a case that ends with dismissal of all charges or a short term of incarceration is completely different from a case that ends with a sentence of thirty years in prison. In OPD's chart, complete dismissal of all charges and a sentence of thirty years are treated identically. OPD's claim that the number of hours worked on a case made no difference to the outcome of the case ignores this critical difference. The Council should not approve a funding mechanism that starts from this flawed premise.

Very truly yours,

Eileen Farley, Executive Director  
NORTHWEST DEFENDERS ASSOCIATION



**APPENDIX H**

**Washington Defender Association  
110 Prefontaine Place S., Suite 610  
Seattle, Washington 98104**

Christie Hedman, *Executive Director*  
Craig Platt, *President*

Telephone: (206) 623-4321  
Fax: (206) 623-6420

February 13, 2008

David Hocraffer  
King County Office of Public Defense  
123 Third Avenue S., Suite 400  
Seattle, WA 98104

Dear Mr. Hocraffer,

Thank you for requesting the Washington Defender Association's (WDA) input on the King County Office of Public Defense proposed changes in persistent offender case payments. The WDA board has reviewed the proposed changes after asking for input from the four King County public defender agencies affected. The changes also were analyzed in light of the persistent offender caseload standard and commentary that was adopted by the WDA board of directors in 2006 when updating WDA's *Standards for Public Defense Services*.

The caseload standard and commentary are enclosed. The standard states that an attorney should not handle more than eight open persistent offender cases at a time (as a full-time caseload). Attorneys who handle more than four open persistent offender cases, particularly if they also have other cases, should have co-counsel on every case. The WDA standards assume a full-time attorney is working on the 8 cases (or 4 cases if handling them alone) full time to their conclusion. Thus they presume no flat rate per case, but that the attorney will be compensated for her actual time until completion. This supports the present OPD compensation system for 593 cases, and argues against the proposed new system.

The ultimate costs of these cases to the state and to the client are surpassed only by death penalty cases. These cases require far more attorney time and staff and support services than other felonies. This is not only because the stakes are so high, but also because of the volume of work these cases demand. A defense attorney representing a client in a "two strikes" or "three strikes" prosecution must defend the client not only against his or her current charge, but also raise appropriate challenges to the POAA sentencing scheme. A defender in this context also must review and pursue any possible challenges to the alleged criminal history of his or her client. As with the death penalty cases, effective mitigation work is central to the ability to provide effective assistance of counsel in persistent offender cases. A thorough investigation of mental health issues, victims' attitudes about punishment, and a comprehensive understanding of the client's medical, social, family and medical histories are critical and necessary to developing an effective persistent offender defense. This information is crucial at every critical stage of the representation, including negotiating with the prosecutor for a more equitable resolution to the case, preparing for and participating in trial, as well as advocating effectively at sentencing when necessary.

In light of these factors and others enumerated in the WDA *Standards* and taking into account the average number of hours dedicated to these cases the King County agencies (totaling 186 hours per case), the WDA board opposes the proposed contract change. Presumptive limits are inappropriate in cases of this magnitude unless they take into consideration an accurate estimate of the hours necessary. The proposed limit of 36.3 hours is woefully inadequate.

February 13, 2008  
Page 2

Effective representation is a paramount goal of the justice system. Indigent defendants charged with a third strike offense should not face representation by public defenders who suffer from time and scheduling demands that make effective representation impossible.

We know you share this same desire for effective representation and therefore urge you to withdraw the proposed contract language and to continue to provide compensation as successfully implemented for the past three years. If further study is required, our organization will volunteer to participate in any task force or workgroup gathered to address the issue.

Thank you once again for requesting our input. Please feel free to contact us if you have any questions or if we could provide you with further information.

Sincerely,



Craig Platt  
President

encl.

## Washington Defender Association Standards for Public Defense Services

### STANDARD THREE: Caseload Limits and Types of Cases

#### Persistent Offender

**Caseload Standard:** Eight open "persistent offender" (life without the possibility of release) cases at a time.

#### Commentary:

This standard applies to the defense of "persistent offender" cases, known colloquially as "two strikes" and "three strikes" cases. A conviction under the Persistent Offender Accountability Act (POAA) results in a mandatory minimum "term of total confinement for life without the possibility of release."<sup>1</sup>

The Ninth Circuit has held that "as a matter of law, a sentence of life without the possibility of parole is significantly different from a sentence of life with the possibility of parole...." *Grisby v. Blodgett*, 130 F.3d 365, 369-370 (9th Cir., 1997) [citation omitted].

The nature of the penalty was mentioned in a recent Washington court of appeals decision that reversed an assault conviction and a persistent offender finding because of ineffective assistance of counsel. In *State v. DeLavergne*, 2004 Wash. App. LEXIS 1186, 121 Wn. App. 1074 (2004) (unpublished), the court noted that,

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<sup>1</sup> Notwithstanding the statutory maximum sentence or any other provision of this chapter, a persistent offender shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death. In addition, no offender subject to this section may be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of release as defined under RCW 9.94A.728 (1), (2), (3), (4), (6), (8), or (9), or any other form of authorized leave from a correctional facility while not in the direct custody of a corrections officer or officers, except: (1) in the case of an offender in need of emergency medical treatment; or (2) for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

Rev. Code Wash. (ARCW) § 9.94A.570

The Legislature has made clear that persistent offenders may not be released even for medical care.

"The legislature does intend to clarify that persistent offenders are not eligible for extraordinary medical placement." Rev. Code Wash. (ARCW) § 9.94A.015

For this reason, and because of the emotional toll these cases can take, defenders should work in pairs on "two strikes" and "three strikes" cases whenever possible. Partners assist each other with the workload and provide empathy and support for one another in the face of great responsibility.

When there is a large enough number of persistent offender cases in a given defender office or county, it is preferable for the defense attorney to focus his/her practice on those cases and not to handle other types of cases. If a defense attorney has a number of other felony cases with frequent court appearances, it can be difficult to allocate the necessary time to the persistent offender cases. Not every county has a volume of persistent offender cases sufficient to support a full-time attorney or unit of attorneys. Each open persistent offender case should be considered one-eighth of a full caseload.

In its 2005 public defense contracts, King County took a "presumptive case credit" approach. Each persistent offender case was considered equivalent to eight felony cases. If the attorney time on the case exceeded 97 hours, the defender office was eligible for additional compensation under the County's extraordinary case credit system. If the attorney time were less than 96.8 hours, then case credits were reduced.<sup>6</sup> This approach provided the defenders the resources they needed while providing flexibility in the event that the case takes less attorney time. In 2006, King County returned to an hourly billing system for persistent offender cases, with one case credit for every 12.1 hours of attorney time.

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<sup>6</sup> The provision stated:  
8 case credits upon assignment. If the attorney time when the case is closed is less than 96.8 hours, the Agency will be debited credits at a ratio of 12.1 hrs to 1 credit (e.g. 12.1 hrs or less, Agency is debited 7 credits; 12.2 hrs to 24.2 hrs, Agency is debited 6 credits). If the attorney time in the case exceeds 97 hours, the Agency is eligible for additional case credit according to the Extraordinary Cases section of this Attachment I. The Agency shall report monthly to OPD the total attorney time in each persistent offender case. It is understood that the Agency director or the director's designee will review the status of all pending persistent offender cases in the Agency at least monthly and will discuss the cases with the attorneys representing the clients. Such review will include the status of investigation, preparation and presentation of mitigation packages, legal and factual issues in the case, the client's physical and mental status, and any plea bargaining offers.

The extraordinary cases section states that the case shall be given extra credits if the nature of the case requires such extra credits, based upon a written application from the Agency for additional credits and negotiation between OPD and the Agency. Factors entering into the awarding of extra credits include, but are not limited to: amount and complexity of evidence; complexity of legal issues; number of defendants; and, actual length of trial. The Agency application must be specific about the work to be done, the estimated length of time to perform the work, and the personnel that will be assigned to perform the work.

Defenders must review whether the prior conviction can be counted as a "strike" in calculating the offender score or as a predicate "strike".<sup>9</sup> Because the goal in these cases is often settlement, rather than trial, counsel should prepare challenges to each potential "strike" before the settlement negotiations.

If the defendant's previous conviction(s) were imposed under the laws of another state or under federal law, to count as "strikes" they must be comparable to "most serious offenses"<sup>10</sup> or to serious sex offenses<sup>11</sup> under Washington law in the "three

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tactical evaluation, and no risk would have been incurred by presenting the proffered evidence." *Id.*

<sup>9</sup> The scope of the statute is broad, and counsel must be familiar with all of its elements:

"Persistent offender" is an offender who:

(a) (i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b) (i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

Rev. Code Wash. (ARCW) § 9.94A.030

<sup>10</sup> RCW §9.94A.030(2B)  
<sup>11</sup> RCW §9.94A.030(32)(b)

emotional weight to bear, and defense attorneys should offer their clients as much support as they can.

Finally, defense attorneys must prepare for negotiation by researching possible alternative charges, and discussing these options with their clients. Armed with mitigation material and challenges to the previous and current "strikes," attorneys can be successful in convincing prosecutors to agree to a lesser charge, sometimes for a greater sentence than normally accompanies the lesser charge, but for significantly less than a life sentence without the possibility of parole. A number of cases which began as persistent offender cases have resulted in pleas to less serious felony or misdemeanor charges, and some have been dismissed following intensive defense work.





**APPENDIX I**



King County  
Office of Public Defense  
Department of Human Services  
321 Smith Tower  
Seattle, Washington 98104  
(206) 296-7582 Administration  
(206) 296-7662 Screening  
(206) 296-5240 TTY/TDD  
(206) 296-0587 FAX

April 4, 1994

**REVISED**

TO: Agency Directors

FM: James C. Crane, Administrator

RE: 593 Case Credits

Per our discussions regarding the work required for cases filed by the Office of the Prosecuting Attorney (OPA) as those falling under the provisions of Initiative 593, I proposed the following be in effect for all cases so identified on April 1, 1994:

- the Agency will track and report to OPD by the 5th working day of the following month the number of attorney hours, investigator hours and support staff hours spent on each 593 case;
- the OPD Administrator will review the hours submitted by the Agency to determine the amount of credit to be given for each 593 case for the prior month;
- credit will be assigned on the basis of 1 credit per 12.1 (1820 work hours/year divided by 150 caseload) attorney hours, up to 6.25 credits per month per case;
- credits for 593 cases will be given from already contracted felony credits, and will continue only so long as there is available credit resource available; and
- this procedure will be reviewed at the end of each month to determine its continued usefulness, and to determine the amount of resource required to staff 593 cases;
- once the credit "value" of 593 cases is established, OPD and the Agency will execute a contract modification establishing the conditions, including credit, for 593 cases.

Please review and add your comments, if any, so that we can proceed.



**APPENDIX J**



King County Executive  
GARY LOCKE

September 9, 1994

The Honorable Kent Pullen, Chair  
Metropolitan King County Council  
Room 1200  
COURTHOUSE

RE: Budget Proviso Response - Initiative 593 Impacts

Dear Councilmember Pullen:

The King County Council, in adopting the 1994 budget, directed that the Office of Public Defense (OPD), in conjunction with other affected criminal justice agencies, prepare a report on the impacts of Initiative 593—the Persistent Offender Act. In order to meet this directive, OPD convened a work group of representatives from Adult Detention, Superior Court/Judicial Administration, Public Defense, Prosecuting Attorney, and the Office of Financial Management. This work group has met regularly to coordinate information and assess impacts to the criminal justice system.

Several areas of potential impact to the criminal justice system have been identified by each agency involved. The major finding of the work group, however, is that given that only one Persistent Offender case has progressed to completion, it would be premature to base any conclusive findings on the amount of information available.

The response to the budget proviso was requested for September, 1994. Given the lack of data available, I am forwarding an interim report.

Members of the work group will continue to monitor information and reconvene at a time when cases filed as Persistent Offenders through October, 1994 have been completed. This will ensure that the Council receives the most up-to-date information for its budget deliberations.

Sincerely,

Gary Locke  
King County Executive

Enclosure

cc: The Honorable Anne Ellington, Judge, King County Superior Court  
The Honorable Norm Maleng, Prosecutor, Office of the Prosecuting Attorney  
Maureen Morris, Chief Financial Officer  
Jan Michels, Director, Department of Judicial Administration  
Art Wallenstein, Director, Department of Adult Detention  
Barbara J. Gletne, Director, Department of Human Services  
593 Work Group

400 KING COUNTY COURTHOUSE 516 THIRD AVENUE SEATTLE, WA 98104 (206)296-4040 296-0200TDD 296-0194FAX

## **INITIATIVE 593 IMPACTS PROVISO RESPONSE**

### **I. BACKGROUND**

On November 8, 1993, the voters of Washington State passed Initiative 593 which went into effect on December 3, of the same year. The initiative, also known as "Three Strikes, You're Out", mandates life imprisonment without parole for any defendant convicted three times for any of the 40 felony charges included in the initiative. The Initiative applies to convictions which occurred prior to the passage of the Initiative, and to both in-state and out-of-state convictions.

### **II. PROVISO**

The King County Council, in adopting the 1994 budget, directed that the Office of Public Defense (OPD), in conjunction with other affected criminal justice agencies, prepare a report on the impacts of Initiative 593. OPD convened a work group of representatives from Adult Detention, Office of Financial Management, Prosecuting Attorney, Public Defense, and Superior Court/Judicial Administration, to study the issue.

### **III. AREAS POTENTIALLY AFFECTED BY INITIATIVE 593**

To date there have been sixteen (16) cases brought to the attention of the judiciary and defense as possible Persistent Offenders. Of these, eight (8) have been filed as such by the Prosecuting Attorney's Office (see attached table "Persistent Offender Defendants"). Of these cases only one has been completed through the sentencing phase. Two others have completed the guilt phase and are awaiting the sentencing phase.

In order to assess impacts, the work group compared the criminal justice processing of potential Persistent Offender cases to the way in which these cases would have been handled had Initiative 593 not passed. These differences are depicted in the chart "Persistent Offender Case Processing".

The work group established that there would be significant differences in the processing of these cases. However, given the extremely small numbers of Persistent Offender cases that have actually been completed, it is the opinion of the work group that there is far too little information and far too few cases that have gone through the King County criminal justice system to be able to draw accurate or final conclusions about potential impacts. Cases from other jurisdictions across the state provide little further information. A recent survey by the Washington Association of Criminal Defense Lawyers (WACDL) collected information on only six additional cases, five (5) in Snohomish County and one (1) in Whatcom County.

The work group believes that more cases will have to be completed in order to be able to have enough information to allow thoughtful or useful analysis to assess and quantify the potential effect these cases will have. What follows then, is a qualitative description of likely impacts to the affected agencies.

Superior Court anticipates a substantial increase in the number of requests for expert service to be provided at public expense. This would include investigation costs for those cases assigned to a member of the OPD Assigned Counsel Panel (agencies' investigation costs are currently handled within the contracted budget). In addition, for Assigned Counsel as well as contract defenders, there will likely be increased expert witness costs, and psychological and mental health evaluations for alleged Persistent Offenders.

#### IV. SUMMARY/ISSUES

According to the information provided by King County criminal justice agencies, it is too soon to be able to accurately quantify the impact of Initiative 593 "Three Strikes, You're Out." To date only one case has reached completion. Any conclusions regarding impacts would be premature and based on insufficient information.

The work group was able to establish several points of information. These include the following:

- The Washington State Sentencing Guidelines Commission originally estimated that there would be twenty-nine (29) Persistent Offender cases in King County in 1994. To date, eight (8) have been filed. The majority of these are robbery charges (7) with 1 murder charge. The work group anticipates at this time that there will be fewer cases than originally estimated, likely falling in the 12 - 16 range.
- Of the eight cases filed, only 1 has been completed to date. This case is considered unique due to the defendant's personal circumstances. Two other cases have finished the trial phase; the sentencing phase has not yet begun.
- Each agency involved was required to develop new policies and procedures in order to process these defendants and determine impacts. These procedures are now established.
- All members of the criminal justice system anticipate that nearly all persistent offender defendants will plead not guilty and demand a jury trial. The fact that virtually all of these cases will now go to trial, will have substantial workload impact for most agencies.
- Each agency is currently in the process of identifying the cost of new procedures and associated workloads. Some of these costs may be absorbable within agencies' current budgets. Some costs will require additional resources. An agency breakdown indicates the following workload impacts:

Department of Adult Detention: increased average daily population of an estimated eleven inmates; increased correction officer costs for transport to court;

## PERSISTENT OFFENDER STATUS

Defendant	Charge	Notice of Persistent Offender	OPD Assignment	Dispo/Sentence Status	Sentence Date
94-1-00144-9	Robb 2	3/7/94	A/C - Gaisford		
93-1-06019-6	Robb 2	2/7/94	SCRAP	Guilty; not yet sentenced	
94-1-00443-0	Robb 1		TDA	Pled Guilty/Life	
94-1-0094-6	Att Robb 2	3/16/94	TDA	Hung Jury; 2nd trial pending	
94-1-01558-0	Robb	3/28/94	TDA	Guilty; not yet sentenced	
94-1-01314-5	Murder 1	3/28/94	A/C- Minor		
94-1-01095-2	Att Robb 2	4/26/94	SCRAP	Guilty; not sentenced	
94-C-01272-6	Robb 1	593 Never Filed	NDA	Defender Researched	
94-1-02549-6	Robb 1	593 Never Filed	TDA	Guilty on charge	
94-1-02799-5	Robb 2	8/5/94	TDA	Pre-trial, trial 10/03/94	
94-1-04355-9	Robb 2	593 Never Filed	SCRAP		
94-1-04491-1	Robb 2	8/3/94	SCRAP		
94-1-03102-0	Arson 1	593 Never Filed	TDA	Guilty on charge	
94-1-05154-3					
94-1-04575-6					
94-1-05017-2					

