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The Honorable Bob Ferguson
King County Metropolitan Council
King County Courthouse
516 Third Avenue, 12th floor
Seattle, WA 98104

Dear Bob:

I respectfully submit to you the Prosecuting Attorney's Office's proposal for funding from the Criminal Justice Reserve fund. Our proposal contains three primary components, each of which will help address existing needs within my office and contribute to the more efficient operation of the entire King County criminal justice system.

I look forward to working with you and the Council over the coming weeks to perfect this proposal.

I. Current Criminal Trial Practice **\$337,500**

A. Two Backlog Reduction DPAs -- \$225,000 (April-December)

Since 2008, the PAO has lost 36 deputy prosecuting attorneys (DPAs) (28 criminal, 8 civil) and 15 staff positions as result of severe budget cuts. The loss of 51 FTEs represents an overall 10% reduction in PAO staffing levels compared to 2008.

While the number of PAO employees has decreased significantly over the past three years, the number of aggravated assaults and other serious felonies has dramatically increased. Aggravated assaults have increased 42% and robberies have increased 31%¹ during the same three-year period of time. In addition, the number of violent juvenile "auto-adult" cases increased by 47% since 2008. And, there are currently 48 open homicide cases pending in the PAO.

¹ According to King County Superior Court Criminal Department Statistical Report December 2010, Report # CRM-2010-12:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Aggravated Assaults	895	1,461	1,546
Robbery	328	532	478
"Auto-adult" juvenile cases (from PAO records)	30	63	57

The increase in the number of serious cases marks a shift that began in late 2008 when the PAO implemented major policy changes to its felony filing and disposition standards². While those policy changes resulted in an overall reduction in the number of felony filings, it also means that a significant number of less serious cases have simply shifted to district or municipal courts. The felonies that remain in Superior Court are all serious, more complex, and much more likely to resolve after jury trial, rather than by plea.

The decline in the number of prosecutors at a time when the number of serious felony crimes is on the rise presents a challenge for the PAO as it decides how to deploy dwindling resources.

The loss of 28 criminal DPAs marks a 16% reduction in the number of Criminal Division DPAs and significant reduction in the PAO's trial capacity. When DPAs are not available for trial because they are *already* in trial on another matter, defendants sit in jail -- at the county's expense -- awaiting trial. When DPAs are not available for trial, the Court, when faced with potential speedy trial challenges, may also be forced to release into the community dangerous felons who are awaiting trial.

A very recent Superior Court study concluded that a criminal case was *five times* more likely to be held over or delayed due to prosecutor unavailability than public defense unavailability. In fact, the former Criminal Presiding Judge observed in late 2010 that while both DPAs and defense counsel are "over-booked," that the problem was particularly acute with DPAs. Since the judge made her observation, the PAO has lost an additional 12 Criminal DPAs as a result of 2011 budget cuts.

Public defense agencies are largely protected by their case-credit contracts from significant cuts to their trial capacity, but criminal deputy prosecutors must pick up the load once spread among 28 other DPAs, typically carrying 40 or more felony cases on their caseload at any given time. While the DPA is in trial on one case, the other linger and more new cases are assigned.

In addition, overburdened DPAs who lack the time to thoroughly prepare and further investigate cases, subpoena witnesses, meet with defense experts, retain their own experts, and complete the myriad of other trial preparation tasks will be severely disadvantaged at trial.

Having too few DPAs not only slows the trial process, it can also lead to enormous backlogs in Superior and District Court.

The nature of criminal prosecution requires that prosecutors and support staff focus on the urgent matters with Constitutionally-compelled deadlines. Under state law, charges must be filed within 72 hours of a person's arrest and incarceration. The PAO often does not get the investigation from police until half (sometimes more) of that time has been exhausted. These are the most serious violent crimes committed in the county, and a sufficient number of DPAs must be available to receive, review and file these "rush" cases in order to constitutionally hold a defendant in custody on a serious violent offense.

² As of October 1, 2008, the following cases are referred directly to municipal/district court prosecutors as misdemeanor offenses:

- Property, identity theft and related crimes where the value of the loss is \$5,000 or less, and
- Simple drug possession cases involving small amounts of drugs

What begins to pile up while our DPAs are in trial and also attending to the most urgent matters of the day are the criminal cases that are brought police where the defendant is not in custody. These can be very serious cases as well, such as residential burglary, auto theft, major economic crimes, or DUI.

PAO filing backlogs impact the entire criminal justice system. Victims obviously suffer when cases go unfiled, but defendants also suffer when cases go unfiled. Uncharged defendants who are out of custody facing potential criminal charges may commit additional crimes while DPAs are working through their pending, backlogged cases. When the defendants' cases are eventually filed, some will potentially face higher sentences with longer jail terms. Some defendants may also be ineligible for certain treatment-based options because they committed additional crimes while waiting for pending crimes to be charged.

For all of these reasons, the PAO is requesting Backlog Reduction Assistance. \$225,000 would fund two full-time filing DPAs (April - December) who would work solely to ensure that no filing backlog develops in either felony or misdemeanor cases referred to the PAO by law enforcement. Having this resource would not increase the number of cases filed, but would ensure that the cases referred are filed within 30 days of referral.

B. Early Plea DPA -- \$112,550 (April-December)

The PAO's Early Plea Unit is dedicated to evaluating every case in the criminal justice system in an effort to resolve as many cases as possible prior to a trial date being set. No other part of the PAO's practice more directly affects "time to disposition" other than EPU. Once a trial date has been set, all parties expend significant resources in subpoenaing witnesses, conducting interviews, retaining expert witnesses, and conducting additional investigations and testing evidence. It benefits the entire criminal justice system to resolve cases as quickly and efficiently as possible.

\$112,500 would fund one additional EPU DPA. EPU DPAs contact defense counsel at the earliest point after the case is filed and begin plea negotiations. Another DPA in EPU would allow the PAO to do further investigation of a case if a defense attorney identifies new witnesses or provides new information. Early attention to felony cases is critical to keeping the entire criminal justice system as efficient as possible.

II. Continuation of Successful Grant-Funded Gang and Gun Prosecutions \$200,000

A. Gang Grant -- \$150,00 (July-December)

King County is home to an estimated 5,500 identified hard core criminal gang members. Over the past three years, King County has experienced an increase in gang-related violence, particularly among juveniles using firearms. In 2008 and 2009, King County averaged 29 gang-related homicides and 200 reported gang-related shootings. In addition, King County had a dramatic increase in the number of "auto-adult" cases, where juveniles are automatically prosecuted as adults for certain violent crimes.

On July 1, 2009, the PAO was awarded a one-year federal grant³ to help address this growing area of concern. The purpose of the grant was to have prosecutors work closely with police to improve the investigation, case development, and prosecution of gang violence-related crimes.

This grant money was used to fund two full-time DPAs dedicated solely to this work. These two DPAs (one at Courthouse and one at the MRJC), in partnership with the King County Sheriff's Office and the Seattle Police Department's gang units, successfully developed a system of improved investigation and resource and information sharing among our region's law enforcement agencies on cases involving known or identified gang members. In addition, the PAO worked with police to develop and apply to gang violence cases the same "vertical prosecution model" that it had successfully applied years earlier to the prosecution of auto theft cases.

The PAO's efforts were successful. In a one-year period of time (July 2009 -- June 2010), the PAO filed more than 225 cases against confirmed gang members. However, with only one year of funding, the PAO knew that it would not be able to sustain these resources indefinitely. Fortunately, the federal grant money was extended for an additional year, just prior to the expiration of the first grant. As a result, this program is currently funded through June 30, 2011.

The PAO is requesting \$150,000 funding (July-December) to continue this program for the remainder of 2011, as it continues to identify and apply for potential federal funding to continue this important work.

B. Armed Career Criminal Gun Grant -- \$50,000 (July-December)

Since 2001, the PAO has received federal grant funding from the U.S. Department of Justice's "Project Safe Neighborhoods" Initiative to combat gun crime. The PAO partnered with the U.S. Attorney's Office to launch an innovative program where a PAO DPA is cross-designated as an Assistant U.S. Attorney and dedicated solely to the prosecution of gun-related crimes.

Because this particular DPA has the ability to prosecute cases under either state or federal law, he reviews every firearm crime referred to the PAO and makes the determination of whether to proceed in state or federal court.

As a result, certain crimes that would not be punishable under state law are still prosecuted. For example, unlike Washington's laws, federal laws prohibit unlawful possession of ammunition in addition to unlawful possession of a firearm. Similarly, some firearm crimes carry greater penalties under federal sentencing laws than state sentencing laws.

Having the ability to prosecute in either system gives this DPA the unique ability to obtain guilty pleas in state court by simply threatening federal prosecution.

Currently, the Project Safe Neighborhoods funding is scheduled to expire at the end of the current federal fiscal year. The U.S. Attorney's Office is hard at work to identify continued federal funding of this important and successful program. In the meantime, the PAO is

³ The PAO was awarded a \$265,357 Justice Assistance Grant (administered by the Washington State Department of Commerce) under the American Recovery and Reinvestment Act for the period July 1, 2009 through June 30, 2010.

requesting \$50,000 to keep this program running until the end of 2011, when, hopefully, new federal funding has been identified.

III. New PAO Juvenile Offender Enhanced Diversion Project **\$100,000**

The PAO is requesting funding to launch a new program designed to divert juvenile offenders from the criminal justice system into community-based programs and workshops led by community leaders. The goals of this new program would be to target some portion of juvenile offenders who are currently failing to participate in our current court diversion program, and divert them to services within their individual communities in a timelier fashion.

Currently, certain juvenile misdemeanor offenders are eligible to have their cases diverted out of juvenile court and instead have their cases determined by a volunteer Community Accountability Board (CAB). When a case is recommended for diversion, the youth, along with his or her parent or guardian, meet with the CAB in a confidential proceeding to discuss the offense.

CABs make no findings regarding innocence or guilt, but generally require that the youth take responsibility for his or her actions by agreeing to complete a some sort of sanction, such as, completing community service, paying restitution, attending counseling, getting a drug or alcohol assessment, obeying a curfew or no-contact order or attending parent-teen mediation. The youth's agreement is then formally set forth in a Diversion Agreement. Juvenile court staff then monitor the juvenile's progress and completion of the Agreement. Once the conditions of the Agreement have been completed, the criminal case is closed, and the youth has no criminal record as a result of the offense. If the youth fails to abide by the Agreement, then the case is referred to the PAO so that charges may be filed in juvenile court.

The present CAB system works well in most parts of the county, and they are staffed with dedicated volunteers concerned with the youth of our community. An Enhanced Diversion Program would make significant improvements in two main areas:

A. Youth and Family Contact

The current approach to contacting affected youth is to send letters to his or her last know address. There is no attempt to make personal contact with the youth to explain the program and its benefits. In 2009, 310 eligible youth could not be located or failed to respond to the diversion letter. Of the kids who missed out on this opportunity, about 40% (122) were African-American and more than 15% (47) were Latino or Native American.

An enhanced diversion program would enlist the help of community members to make personal contact with youth and their families to ensure that all who are eligible for diversion have that opportunity. Our goal would be to increase participation within under-served communities.

B. Educational Workshops

Current law allows CABs to sanction a diverted youth to work up to 20 hours of community service or to attend up to 20 hours of educational programming. Instead of emphasizing only community service hours, which typically involves assignment to juvenile work crew, an enhanced diversion program would instead require the youth and his or her family to attend an

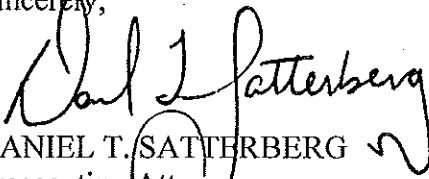
educational program with an agenda similar to that of our truancy workshops. Guest speakers and community leaders would be invited to share their stories and impress upon the youth the importance of staying in school and out of trouble with the law.

The PAO is requesting \$100,000 (April-December) to focus on those youth who are currently slipping through the cracks of our current diversion program. This money would fund a dedicated, full-time coordinator to indentify these kids and match them to community leaders and mentors who agree to work closely with these youth to connect them with community resources, services, and other positive opportunities. This money would also fund program and services for these youth on a per capita basis.

IV. Conclusion

We look forward to working with you and the rest of the King County Council to perfect this proposal.

Sincerely,


DANIEL T. SATTERBERG
Prosecuting Attorney

cc: The Honorable Reagan Dunn
The Honorable Larry Gossett
The Honorable Jane Hague
The Honorable Kathy Lambert
The Honorable Joe McDermott
The Honorable Julia Patterson
The Honorable Larry Phillips
The Honorable Pete von Reichbauer
Kelli Carroll, Council Staff