

Implementation Costs for the Case Weighting System Recommended by The Spangenberg Project

January 31, 2011

Executive Summary

In response to Proviso 6 in Section 18 of the 2011 Adopted Budget, Ordinance 16984, this report provides an estimate of the cost of implementing the case-weighting defense payment model described in the report "King County, Washington Public Defender Case-Weighting Study Final Report," produced by The Spangenberg Project (TSP).

Of this appropriation, \$100,000 shall not be expended or encumbered until the office of performance, strategy and budget, in collaboration with the office of the public defender, conducts an analysis and explanation of that analysis of the costs to implement The Spangenberg Project consultant report entitled King County, Washington Public Defender Case-Weighting Study Final Report, dated April 30, 2010.

The executive shall file the analysis and explanation required to be submitted by this proviso by January 31, 2011, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff and the lead staffs for the budget and fiscal management committee and the law, justice, health and human services committee or their successors. Upon receipt, the clerk shall provide a proof of receipt to the director of the office of performance, strategy and budget.

Staff in the Office of Performance, Strategy, and Budget (OPSB) and the Department of Community and Human Services, Office of the Public Defender (OPD) have collaborated to develop initial estimates for those recommendations in the TSP report that have identifiable costs. These estimates are preliminary, and should King County decide to move ahead with implementation of the recommendations in the report, extensive further analysis would be needed.

TSP made multiple recommendations, of which four have implementation costs:

- Replace the current credit-based public defense payment system with the TSP-described case weighting model, which has an estimated cost increase of \$11.3 million, or approximately 34 percent, above the costs in the 2011 Adopted Budget for public defense contracts.
- Increasing support staff ratios for defense contract agencies, the cost of which is dependent on the size of the staffing increase. The first incremental increase for clerical staffing (0.1 FTE per attorney) would increase the cost of the public defense contracts by \$1.1 million under the case-weighting based Public Defense Payment Model. The first incremental

increase for paraprofessional support staffing (0.1 FTE per attorney) would increase contract costs by \$1.6 million.

- Increasing OPD staff, with a cost of between \$70,000 and \$90,000 per FTE; and
- Developing a new public defense information technology system, the business case for which is estimated to cost \$122,000.

Given the ongoing structural deficit in the General Fund, which has been compounded in recent years by the nationwide Great Recession, the County cannot afford to fully implement the case weighting model recommended by TSP at this time. Nonetheless, performing the technical work of developing this cost estimate is a necessary step in the process of implementing the case-weighting study, as identified in the Case Weighting Implementation Plan transmitted to Council on June 30, 2010. This cost estimate provides policymakers with critical information regarding the fiscal impact of the recommended case-weighting system to use in their decision-making process regarding future implementation of the TSP public defense payment model. As articulated in the 2010 Implementation Plan, Executive staff, in conjunction with Criminal Justice agencies and the public defense contractors, are moving ahead to implement the recommendations in the TSP report that do not have a cost, including taking steps to foster greater communication, collaboration, and efficiency in the Criminal Justice system. King County remains committed to achieving two goals identified in the King County Strategic Plan: continuing the quality public defense service that ensures equal access to justice for all our residents and maintaining the effective and efficient operation of the county's criminal justice system.

Background

King County contracted with The Spangenberg Project to produce the case weighting study in response to a proviso in Ordinance 16542. The case-weighting study was conducted in three phases. First, representatives from OPD, the defense contractors, the courts, the PAO, OPSB, and County Council worked with TSP to outline the goals and guidelines of the study. Second, TSP oversaw a time study for a 12 week period in late 2009 and early 2010 wherein contract defense attorneys tracked the time they spent on specific cases and engaged in a series of interviews with Criminal Justice System participants. Third, TSP analyzed the time data and the interview results and made recommendations in its report.

TSP's recommendations (TSP Report, p. 2):

- 1) King County should replace its case credit system with a new model based on this case-weighting study.
- 2) OPD should simplify the defender agency contracts.

- 3) The County Council and Executive, acting in cooperation with OPD and the public defender agencies, should address several challenges to the provision of services in the King County public defense system by:
 - a) Increasing the number of support staff within each agency and OPD.
 - b) Establishing greater transparency and communication between the four private defender agencies and OPD, the County Executive, and County Council.
 - c) Developing a centralized repository of case management system information from the agencies and OPD, while also taking advantage of information provided by the courts' systems.
 - d) Promoting collaboration between the public defense bar, the Prosecuting Attorney's Office (PAO), the courts, and the corrections facilities.

- 4) Any future changes in the law or further changes in prosecutorial policies may require a reevaluation of these workload standards.

As indicated in the June 2010 Case Weighting Implementation Plan, efforts to implement recommendations that do not have significant cost were initiated in 2010 and are ongoing. These include recommendations 2, 3b, and 3d, as well as other Criminal Justice system-level recommendations mentioned in the report.

Cost Estimate

The recommendation that King County shift to a new model for paying for public defense contracts carries a significant cost: \$11.3 million, or 34 percent above the public defense contract costs in the 2011 Adopted Budget. See Attachment B for a detailed description of the costs. This cost estimate is necessarily preliminary because the TSP report did not include all the details needed for full implementation of the recommended case weighting system, and significant work would be necessary to finalize the estimate prior to implementation of the recommended case-weighting system should King County decide to proceed with implementation. Areas where further analysis and potential data gathering are needed are described below.

In the current public defense payment model, King County procures public defense services from four contract agencies who are paid according to the number of credits assigned. Credits are assigned at the time a case is filed with the court and at prescribed intervals thereafter for specific case types. Sometimes, a case equals a credit, but in other instances a case may be worth multiple credits (homicides, sex crimes, major felonies). Stages of a case, such as hearings, may warrant the issuance of another credit or partial credit. The rules for issuing credits are described in detail in the public defense contracts. There are two large categories of credits—felonies and misdemeanors—with different payment values. The value of a credit for a particular case type is calculated using a complex formula that takes into account the contracted workload standard for the case type, defense attorney's salaries assuming parity with the

Prosecuting Attorney's Office, the cost of the contractually defined level of support staff per attorney FTE, and a portion of the rent for the contractors' leased space.

The case-weighting public defense payment system recommended by the TSP report would replace the credit system with a system based on work units, which are equal to the average number of attorney work hours per disposition for each case type. Through its time study, TSP determined the average number of hours per disposition, or case resolution for multiple case types (see Attachment A). To calculate a contractor's payment, the number of work units associated with that contractor's dispositions would be multiplied by the current fully loaded cost of one hour of attorney time, assuming a 40-hour workweek per FTE attorney. TSP's case weighting system assumes that each attorney is available for 1792 hours of work per year, which is equivalent to a 40 hour work week with approximately 288 hours annually for vacations, holidays, and sick leave. For purposes of this analysis, the existing Public Defense Payment Model was used to calculate the cost of one attorney hour.

The methods outlined in the TSP report were adhered to as closely as possible while developing the cost estimate. However, developing the cost estimate was challenging because the case types used by TSP do not coincide with the credit system and a simple crosswalk from one model to another is not possible. In some cases it was necessary to make judgments because the report provided insufficient detail. For example, TSP had insufficient data to assign a work unit value to some case types. In these cases, OPD staff used their professional judgment to assign an appropriate number of work units. The assumptions and decisions behind the cost estimate are given in the footnotes of the spreadsheet in Attachment B.

The estimated 34 percent increase in costs with the TSP system is due to several factors. The greatest cost increases were in the felony case types, which require the greatest amount of attorney time. In addition, \$1.6 million or four percent, of the increase over the 2011 Adopted Budget is because TSP recommended King County continue the payment method for Contempt of Court cases in place at the time of the study in 2009/2010. Subsequently, in the 2011 budget process, the County and defense contractors agreed to change the method for paying Contempt of Court cases, leading to budget savings.

Beyond the case-weighting payment calculation, TSP made recommendations related to contractor and OPD staffing, as well as the need for a technology solution.

Because OPD's own work processes and assignments would need to be modified to accommodate changes in how cases are assigned at the arraignment calendar, TSP recommended increased staffing in OPD. (TSP Report, p. 80). TSP did not specify the level of staffing increase. Any additional OPD staff are likely to cost between \$70,000 and \$90,000 per FTE including benefits, depending on the job class and experience level.

TSP also recommended increased support staff for contractors. Although the TSP report provided information on the level of support staff in different jurisdictions (TSP Report, p. 66), it did not make recommendations for implementation. Considerable analysis and work would be needed to establish appropriate support staff ratios for King County public defenders. Any staffing decision in the defense contracts must include the caveat that King County can only use

a standardized staffing ratio for budget and contract payment purposes; the County cannot require the contract agencies to hire staff in any particular ratio. This cost estimate reflects the current staff ratio in OPD's payment model (i.e., 0.1 attorney supervisor FTE, 0.2 clerical FTE, and 0.5 paraprofessional FTE per each attorney FTE) and does not include any increase. Increasing the amount of support staff would increase the overall costs per case. Based on the attorney staffing level in the attached cost estimate, every additional 0.1 FTE of clerical support per attorney would add funding for 20 FTEs and increase the overall cost by an additional \$1.1 million; every additional 0.1 FTE paraprofessional support per attorney would add funding for 20 FTEs and increase the overall cost by \$1.6 million. If the County chose to do so, it could also contract for different levels of support staff for the various caseload areas as opposed to using standardized ratios as is done in the current contracting model.

Finally, TSP called for the development and implementation of a uniform, inter-connected public defense data management system (TSP Report, p. 74). Similar needs have been noted elsewhere in the criminal justice system. Pending adequate budget and system development, current systems need to be updated for both OPD and contractors to accommodate the new case types and reporting needs. The costs associated with developing and implementing such a system are not known at this time and are not included in the estimated implementation cost noted above. However, the Office of Information Resource Management has estimated that it would cost \$122,000 to develop the business case for the recommended IT system. This proposed business case would identify the cost of the actual system, which would likely require a significant capital investment.

Areas for Further Analysis

Implementing the case weighting payment system would require changes to King County's public defense system that go well beyond simply adjusting the units upon which defense contractors are paid. In order to fully understand the nature and extent of the impacts on the processes and procedures used by the courts and OPD for assignment and appointment of counsel, OPD staff read the report closely to identify the defense system impacts of moving to the case weighting payment system presented by TSP. In addition to cost implications, implementing the case weighting system as designed by TSP would also necessitate changes in public defense management practices and contracts. Specific elements of the proposed new system that would affect defense practices, contracts, and costs are discussed below. Resolution of the elements discussed below would require discussion and negotiation between King County and the public defense contractors, as well as discussions with all Criminal Justice system agencies.

Calendar attorneys – In the case weighting system described in the TSP report, calendar attorney workload is part of the work unit calculation for the underlying case (TSP report p. 30, 50 – 52). This means that arraignments, first appearances, and similar hearings currently staffed by calendar attorneys are included by TSP in the work units for the specific case type and not separately budgeted and contracted for. In the current funding model and agency contracts, various court hearings such as arraignments, preliminary hearings and certain dependency hearings rely on calendar attorneys to ensure availability of counsel for indigent persons appearing in those courts. These calendar attorneys are procured and budgeted separately from

the regular credit system. Implementing case weighting as described in the report would require modification of contracts to reflect the inclusion of appearance by counsel at these hearings as part of the underlying case and would likely also require changes in defense contractor practices to ensure staffing at these hearings.

Specialty courts – TSP did not provide workload standards or work units for Adult Drug Court, Juvenile Drug Court, or Mental Health Court (TSP Report p. 44). In the cost estimate, OPD assumed the County would continue the current practice of staffing and budgeting for these specialty courts, as reflected in the accompanying spreadsheet.

Probation violations – In Spangenberg’s case weighting system, probation violations are included in the work units for the underlying case type (TSP Report p. 50). This means the payment for the initial assignment of a new case would include all post-disposition or post-sentencing hearings relating to probation violation allegations. No new payments would occur for such hearings. This differs from current practice, and contracts would have to be amended to reflect this. It would also necessitate a change in agency practices, as contractors would retain responsibility for clients post-disposition and OPD would not be involved in the assignment of counsel for probation violation matters.

Withdrawal and substitution – TSP averages all substitution costs due to conflicts into an initial case assignment payment (TSP Report, p. 38, 51). TSP assumed contractors would not receive payment for cases assigned due to substitution as they do currently because the costs of substitutions would average out among the agencies across all cases in the system. This change was taken into account in generating the cost estimate; however, it may be in conflict the Washington Rules of Professional Conduct, RPC 1.8(m)(1)(i) and RPC 1.8(m)(2)¹ and further analysis would be warranted if the County decided to move ahead with implementing the recommendation. This is a significant change from the current contract, payment, and budgeting processes. TSP assumed contractors would not receive payment for cases assigned due to substitution as they do currently because the costs of substitutions would average out among the agencies across all cases in the system.

Persistent Offender cases – TSP includes Persistent Offender cases in the work unit calculation for cases of the particular type (Felony A or B) (TSP Report, p.38). OPD took this change from current contract terms into account in developing the cost estimate. Under the case weighting system described by Spangenberg, there would be no extraordinary credits for persistent offender cases beyond the increased case weight in the Felony A and B case types. The current contracts compensate Persistent Offender cases one felony case credit for every 12.1 hours of attorney time on the case; this can include multiple attorneys time on the same case. This is different than

¹ RPC 1.8(m) A lawyer shall not:(1) make or participate in making an agreement with a governmental entity for the delivery of indigent defense services if the terms of the agreement obligate the contracting lawyer or law firm:(i) to bear the cost of providing conflict counsel; or (ii) to bear the cost of providing investigation or expert services, unless a fair and reasonable amount for such costs is specifically designated in the agreement in a manner that does not adversely affect the income or compensation allocated to the lawyer, law firm, or law firm personnel; or(2) knowingly accept compensation for the delivery of indigent defense services from a lawyer who has entered into a current agreement in violation of paragraph (m)(1).

all other felony case compensation, which is pursuant to the interim case weighting methodology established by King County Council.

Case types without sufficient data – For certain case types, TSP gathered insufficient data to determine the number of work units (TSP Report, p. 45-46). The appropriate number of work units for these case types would need to be discussed and agreed upon by all stakeholders. Contracts and budgets would have to account properly for these case types. For the purposes of this cost estimate, OPD staff used their best judgment to assign work units to these case types. Those assumptions are included in the in Attachment B.

Dependency reviews – There is a substantial difference in the nature of dependency hearings included in TSP’s methodology as compared to the hearings currently counted as dependency reviews (i.e., TSP counted a more limited number and type of hearing) (TSP Report, p. 51-52). If case weighting is implemented, this would require contract modifications and training of contractor and OPD staff to properly identify the types of hearings to be reported.

OPD data management system – The current OPD data management system would need significant reprogramming to incorporate the change from credits to work units and the changes in case types reported and assigned in TSP’s case weighting system. This would be necessary until a more global criminal justice information management system is developed in King County, as recommended by TSP. The cost of modifications to OPD’s data management system necessary for case weighting implementation was not factored into this cost estimate.

Assigned counsel – Although the above considerations focus on contractors, private bar assigned counsel panel members also handle substantial public defense work. Given the focus of recommendations of the TSP Report is on workload and quality of service, attention also needs to be paid to application of these new standards to assigned counsel panel members as well. OPD did not factor assigned counsel into the preliminary cost estimates, but it is likely that this would increase the cost to the County beyond the contractor related costs given in this estimate.

Attachment A

Table 5.1 Proposed New Attorney Work Unit Formula

Case Type	Hours	Dispositions ³⁸	Hours per Disposition	Workload Standard (based on 1792 hours)	Work Units (1 hour per Unit)
Superior Court Adult Criminal					
Felony A or B Sex	3085	25	123:24	14.5	123
Felony A Other	2662	43	61:54	28.9	62
Felony B Other	8289	320	25:54	69.2	26
Felony C	4379	204	21:27	83.5	21
Felony Drug	1535	168	9:08	196.2	9
District Court					
Gross Misdemeanor	1385	113	12:15	146.2	12
Misdemeanor DUI	3030	191	15:51	112.9	16
Misdemeanor DV	547	37	14:46	121.2	15
Misdemeanor	600	110	5:27	328.8	5
Expedited Cases	1067	247	4:19	414.7	4
Juvenile Offender					
Juv. Felony Sex	528	5	105:31	17.0	106*
Juv. Felony	4812	249	19:19	92.7	19
Juv. Misdemeanor	2043	372	5:29	326.4	5
Dependency					
Dependency (each initial petition)	2415	96	25:09	71	25
Dependency Reviews/Modification Hearings* *	5241	481	10:53	164.5	11
Termination of Parental Rights (each petition)	1258	19	66:12	27.1	66
Family Treatment Court	345	8	43:07	41.5	43
Other					
Civil Commitment/ITA (each significant stage)	3358	579	5:48	308.9	6

*While there were insufficient dispositions in the Juvenile Sex Crime category to provide a reliable workload standard, we propose that the 106 Work Unit number be used until OPD can perform further analysis of the time required for this case type.

**For each year that the proceeding continues, starting on the date that dependency is established, or .9 Work Units for each additional month. Dependency Reviews and Modification Hearings are the number of Dependency Review Hearing Orders and Permanency Planning Orders reported by the Superior Court during the study period, and do not reflect as many hearings and motions reported by the agencies under the current case credit system

³⁸ In a separate submission, TSP will provide OPD the specific data sources and queries used to arrive at these numbers.

From: The Spangenberg Project Report.

Summary of Estimated Costs for Contracted Public Defense Services

Case Type per CWS	Hourly ¹ Rate	CWS ² # of Work Units	CALCULATED CWS Cost per Case/Dispo	PROJECTED ³ CWS Cases/ Dispos	2011 PROJECTED CWS COST	2011 PROJECTED COST PER MODEL
Felony Cases				5,397	20,456,905	15,349,706
Complex - Aggravated Murder ⁴	n/a	n/a	n/a	7	3,389,545	3,389,545
Homicide	\$ 124	200	24,800	35	868,000	448,541
Felony A or B Sex	124	123	15,252	130	1,982,760	710,189
Felony A Other	124	62	7,688	270	2,075,760	598,054
Felony B Other	124	26	3,224	1,900	6,125,600	2,990,270
Felony C	124	21	2,604	1,750	4,557,000	4,208,806
Felony Drug	124	9	1,116	1,300	1,450,800	2,250,178
Material Witness	124	12	1,488	5	7,440	7,476
Felony Calendar ³	n/a	n/a	n/a	n/a	n/a	746,647
Misdemeanors				4,805	7,138,060	4,218,237
Gross Misdemeanor	\$ 124	12	\$ 1,488	1,400	2,083,200	730,096
Misdemeanor	124	5	620	1,200	744,000	752,676
Misdemeanor Appeal	124	13	1,612	30	48,360	60,214
Misdemeanor DUI	124	16	1,984	1,750	3,472,000	1,329,728
Misdemeanor DV	124	15	1,860	425	790,500	439,061
Misdemeanor Calendar (expedited cases below) ³	n/a	n/a	n/a	n/a	n/a	906,462
Expedited Cases⁵				1,300	644,800	824,056
Expedited Cases	\$ 124	4	\$ 496	1,300	644,800	824,056
Juvenile Offender				3,490	4,678,520	3,487,458
Juv. Felony Sex	\$ 124	106	\$ 13,144	40	525,760	47,279
Juv. Felony	124	19	2,356	1,160	2,732,960	1,181,971
Juv. Misdemeanor	124	5	620	2,290	1,419,800	1,891,153
Juvenile Calendar ³	n/a	n/a	n/a	n/a	n/a	367,055
Dependency				1,789	4,534,308	4,597,409
Dependency	\$ 124	25	\$ 3,100	700	2,170,000	1,278,618
Dependency Review & Permanency Planning (HEARING)	124	11	1,364	925	1,261,700	2,320,886
Family Treatment Court (per case) ⁶	124	43	5,332	84	447,888	220,797
Termination of Parental Rights	124	66	8,184	80	654,720	255,724
Dependency Calendar ³					n/a	521,384
BECCA⁷				922	676,544	678,173
ARY / CHINS	\$ 124	7	\$ 868	423	367,164	311,136
Truancy	124	5	620	499	309,380	367,037
Other				5,759	4,878,433	2,525,664
Civil Commitment/ITA/NGI ⁸	\$ 124	5.8	\$ 719	3,059	2,200,033	1,449,558
Contempt of Court (HEARING) ⁹	124	8	992	2,700	2,678,400	1,076,106
Specialty Courts¹⁰					\$ 1,565,563	\$ 1,565,563
Drug Diversion Court					834,429	834,429
Juvenile Drug Court					80,176	80,176
Mental Health Court					650,958	650,958
GRAND TOTAL					\$ 44,573,133	\$ 33,246,266

1 Hourly rate per OPD Public Defense Model--total price of fully loaded attorney of \$223,107.91 including rent divided by 1792. Budget as adopted in 2010 Ordinance 16984.

Percent Change: 34%

2 Work Units as established by TSP (i.e., total hours divided by total dispositions per case type). TSP bases two case types on number of hours per hearing (Dependency Review/ Permanency Planning and Contempt of Court). Dispos are based on number of hours per "order from specified hearings" (Dependency Review). See COC note below.

3 TSP work units include routine calendar representation, probation reviews, probation violations, withdrawals and substitutions as part of the underlying case. Per this methodology, these activities were not counted separately. Case projections are based on 2011 budget projections.

4 TSP had insufficient data to determine a reliable work unit for Aggravated Murder cases and recommended using current system (see TSP p. 47). OPD used 2011 budgeted amount (i.e., 2 full time attorneys) for cost projections.

5 Current model does not include credits for Expedited Cases. Cost is based on 2011 Calendar Cost.

6 For FTC calculation, OPD used the average number of assignments per FTC case assuming that there would be 40 cases accepted to FTC in 2011 (see TSP p. 44)

7 TSP had insufficient data to determine a reliable Becca ARY/CHINS and Truancy work unit and recommended using the system currently in place (i.e., 250 credits for ARY/CHINS and 375 credits for Truancy per year or per 1792 hours) (see TSP p. 46).

8 On pg 45, TSP references Civil Commitment workload that includes initial petition, 14-day, 90-day, 180-day petitions and petitions for revocation. TSP used the initial petition as the disposition for purposes of determining workload standard. OPD used # of initial petitions filed in 2010 based on AOC/Superior Court data.

9 TSP had insufficient data to determine a reliable Contempt of Court work unit and recommended using the system current at the time (i.e., 225 credits per year or per 1792 hours \$2,682,454) (p. 46). The projected cost per model reflects the 2011 pilot calendar attorney cost.

10 TSP did not provide work units for Adult Drug Court, Juvenile Drug Court, or Mental Health Court. OPD assumed the current level of calendar staffing in this estimate.