



King County

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KING COUNTY COUNCIL

October 13, 2008

The Honorable Julia Patterson
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Patterson:

As requested by an Expenditure Restriction in the 2008 King County Adopted Budget Ordinance 15975, I am transmitting to the King County Council for its review and consideration a report prepared by the Office of the Public Defender (OPD) detailing proposed changes to the payment process for persistent offender cases. The proposed changes will bring persistent offender case payment in line with the payment procedures for other felony cases.

SECTION 52. OFFICE OF THE PUBLIC DEFENDER -
ER1 EXPENDITURE RESTRICTION:

Of this appropriation, funding for persistent offender cases shall be expended only under the status quo reimbursement method, until such a time as the county council has approved, by motion, a change to the existing model. The office of the public defender shall also 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. The department, in completing the study, shall solicit input from the defender associations and from the King County Bar Association. The report and motion described in this expenditure restriction shall be submitted, in the form of 11 copies to the clerk of the council who will keep the original and distribute a copy to each councilmember and the lead staff to the law, justice and human service committee, or its successor.

The OPD contracts with four nonprofit public defense agencies to provide legal representation for indigent persons, pursuant to the Public Defense Payment Model enacted by Motion 12160 in 2005. This model calculates the value of a "credit," which includes an allocation for costs including salaries, benefits, support staff, administration, and rent. Most felony cases 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. 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.



Currently, persistent offender cases are not funded under the Public Defense Payment Model. Instead, agencies bill on an hourly basis: for every 12.1 hours billed, the agency receives the value of one felony 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 stated in Motion 12160, including treating cases types uniformly across all agencies.

Hours billed in persistent offender cases may result in attorney/staff costs of over \$100,000 a case, with a wide variance in the median hours billed among the four defender agencies. The median hours for the highest billing agency were over one-and-a-half times higher than the next agency, and over four times higher than two lowest billing agencies.

In 2007, OPD proposed to change the billing procedure for persistent offender cases, effective with the 2008 public defense contracts. That proposal was to give three felony credits when a persistent offender case was assigned and allow agencies to apply for extraordinary credits for persistent offender cases that meet the current definition of extraordinary cases. The council deferred a decision on this matter, directing OPD via a proviso to the 2008 Budget to maintain the status quo payment procedure, solicit input from contract agencies and the community, and submit a report detailing any proposed changes for future contracts. The enclosed report responds to that proviso.

Background

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 convicted three times of the most serious offenses. 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.”

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 went to trial, while 83 percent were 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.

Public defense work for persistent offender cases is handled by all four of King County’s public defense contract agencies and is funded through OPD. Cases are assigned randomly to the four agencies, with consideration of conflicts, prior representation, and balanced workloads. Some

extraordinary persistent offender cases require hundreds of hours of work. In contrast to all other felony cases, which are paid on a credit basis per the adopted Model, persistent offender cases are currently paid for on an hourly basis, giving one felony credit for each 12.1 hours of attorney time.

Proposed Persistent Offender Contract Changes

As noted earlier, the existing reimbursement methodology for persistent offender cases results in situations where one agency's median payment can be as much as four times that of another agency's median payment, for the same type of work. The proposed contract change is meant to address these variances.

The proposal would award three felony case credits at case assignment – three times the initial credit given for a standard felony case – and gives 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.

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

Process

In response to the 2008 expenditure restriction, OPD analyzed data on 200 persistent offender 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 studied, 167 cases were closed at the time of analysis. The Office of the Public Defender 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).

Per council request, OPD solicited input on the proposed change in reimbursement methodology from the public defense contract agencies and associations. Some in the provider community expressed concerns that under the proposed change they could receive less compensation and may not be able to spend adequate time on these cases. Other concerns were expressed with regard to administrative time, guidelines for awarding extraordinary credits, and caseloads for persistent offender cases. The report includes the agency's letters, as well as OPD's response to the provider's issues.

Implementation Plan

If approved by the council, this contract change for public defense agencies will be included as part of the annual service contract for the next contract period of January 1, 2009 through December 31, 2009.

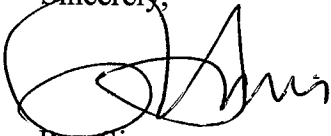
Conclusion

The council-approved Public Defense Payment Model provides “the analytical framework for calculating the costs to provide indigent defense services in order to guide preparation of the proposed annual appropriation for public defense and to structure contracts for indigent defense services.” 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 currently billed for persistent offender cases translates into significant differences in payments per case per agency under the existing payment system – exactly the type of variation in payments the model was designed to correct. Approval of the proposed OPD persistent offender contract changes provides a payment mechanism for persistent offender cases consistent with the payment procedure mandated by the Model and in place now for all other felony cases. I urge the council’s approval of this proposal by motion.

Please feel free to contact Jackie MacLean, Director of the Department of Community and Human Services, at 206-263-9100, with any questions that you might have.

Sincerely,



Ron Sims
King County Executive

Enclosures

cc: King County Councilmembers
 ATTN: Ross Baker, Chief of Staff
 Saroja Reddy, Policy Staff Director
 Anne Noris, Clerk of the Council
 Frank Abe, Communications Director
The Honorable Bruce Hilyer, Presiding Judge, King County Superior Court
Bob Cowan, Director, Office of Management and Budget, (OMB)
Krista Camenzind, Budget Supervisor, OMB
Jackie MacLean, Director, Department of Community and Human Services (DCHS)
V. David Hocraffer, The Public Defender, Office of The Public Defender Division, DCHS