

2015

King County Department of Public Defense: A report on efforts to comply with the ABA's ten principles for public defense



King County

Report to the Metropolitan
King County Council

April 1, 2015

EXECUTIVE SUMMARY

Implementing Ordinance 17678, coupled with a voter-approved amendment to the King County Charter, established the Department of Public Defense (DPD) as a charter-created department within county government. The Department is responsible for managing and providing public defense services to indigent clients in King County, ensuring effective representation at a reasonable cost to the County. Specifically, the Department is to screen residents in need of legal services to determine their eligibility; provide effective representation to those deemed eligible; establish and maintain a panel of outside counsel, assigning cases to the panel when needed because of conflicts of interest; and prepare an annual budget that evaluates and forecasts service delivery levels. The Department is directed by the county Public Defender who is expected to ensure the Department carries out these duties.

The Implementing Ordinance also calls for the Public Defender to ensure that the American Bar Association's Ten Principles of a Public Defense Delivery System guide the management and work of the Department and to report on the results of her efforts in that regard on April 1 of each year. Specifically, KCC 2.60.026 says the Department is to be headed by a Public Defender "whose duties include ... ensuring that the American Bar Association Ten Principles for a Public Defense Delivery System, as approved by the American Bar Association House of Delegates in February of 2002, guide the management of the department and

ABA's Ten Principles of a Public Defense Delivery System

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense counsel's ability, training, and experience match the complexity of the case.
7. The same attorney continuously represents the client until completion of the case.
8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

development of department standards for legal defense representation, and filing with the clerk of the council by April 1 of each year a report on the results of the county public defender's efforts in that regard.” What follows is that report.

The Ten Principles of a Public Defense Delivery System were sponsored by the American Bar Association (ABA) Standing Committee on Legal and Indigent Defendants and approved by the ABA House of Delegates in February 2002. Today, they’re considered the cornerstone of effective indigent defense in the United States. In a 2010 speech, U.S. Attorney General Eric Holder called the ten principles “the building blocks of a well-functioning public defender system.” The principles were created as a practical guide for public officials, policymakers and others charged with creating new public defense delivery systems or improving existing ones. They constitute the fundamental criteria necessary to ensure a system provides effective, efficient, high-quality, ethical, conflict-free legal representation for defendants unable to afford an attorney. Washington state, meanwhile, has additional standards – including Court Rule 3.1 and professional standards issued by the Washington State Bar Association and the Washington Defender Association – which have further refined and enhanced these ABA principles.

This report comes only two months after the Department’s first Public Defender, Lorinda Youngcourt, took over the reins of the Department and a year and a half after the passage of the charter amendment that created DPD as its own Department. The Department is still in its infancy, and some of the issues identified in the ABA principles will require more attention, more resources and more time to fully address. At the same time, the Department is building on a solid foundation of quality public defense in King County – a foundation established by the nonprofit firms that for years provided legal services to indigent clients and by the County’s long-standing commitment to quality public defense. Thus, while the Department has considerable work to do, it is also already functioning at a high level and meeting many of the criteria laid out in the ABA principles.

This report follows on the heels of the Public Defense Advisory Board’s Annual Report on the State of Public Defense, which addressed similar, sometimes identical, issues. The two reports, taken together, give the Council a full picture of the Department’s current status and the steps it needs to take to ensure its clients are receiving the effective, constitutionally mandated public defense envisioned when the ABA developed these important principles.

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.

The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

King County's Department of Public Defense was designed and structured with independence in mind. The voter-approved amendment to the County's Charter makes that clear: It outlines the duties of the Department, including advocacy for justice system improvements and an adequate budget, and then adds, "Elected officials shall not interfere with the exercise of these duties by the department." While the Department is not literally overseen by a nonpartisan board, as recommended in the ABA principles, the structure developed by the County puts in place several safeguards to ensure the Department is free from political influence. First and foremost is the active engagement of the Public Defense Advisory Board, a panel comprised of leaders in public defense from around the region that acts as both an independent advocate for the Department and a partner with the Public Defender, providing feedback, guidance, insight, and support as the Public Defender directs and oversees the Department.

Also significant is the role of the Executive vis-à-vis the Public Defender. While the Public Defender reports to the Executive, she does not serve at his pleasure; rather, she's appointed to a four-year term and can be removed from office only for cause.

The merits of this structure were quickly made evident last fall, when the Advisory Board raised concern about the impact the Executive's 2015-16 budget could have on the department. Per Ordinance 17678, the Advisory Board issued a report on the Executive's proposed budget for the Department, making clear in the report its concerns about the proposed funding level and



The Public Defense Advisory Board, shown above, helps to ensure the Department remains independent.

the possibility of layoffs in the Department. Although the report did not alter the Executive-proposed budget, it resulted in a DPD Budget Workgroup, co-chaired by Budget Director Dwight Dively and the Public Defender. That workgroup is currently working hard and collaboratively to determine appropriate staffing levels for the Department, efforts that are expected to result in a proposed supplemental budget ordinance to support those staffing levels.

The Advisory Board also played the role it was designed to play in the selection of the Department's first Public Defender, Lorinda Youngcourt. Last fall, the board reviewed the applications of all qualified candidates and then recommended to the Executive its top choices for the position. The Executive interviewed them and selected Ms. Youngcourt as his designee. She was confirmed by the Council on March 2, 2015.

In her first months as Public Defender, Ms. Youngcourt has worked closely with the Executive Office and has become a full and active member of the Executive's cabinet. At the same time, the Department has demonstrated the ability to act independently and as an advocate for the Department and its clients. This independence is evidenced through the Department's high-level participation in the Budget Workgroup, as well as testimony submitted to the state Legislature in favor of a death penalty abolishment bill, a stance not taken by the Executive's Office, and other legislative advocacy for the Department.

When the Department was created, there was some uncertainty whether its quasi-independent character would allow it to sue other entities or, indeed, the County itself, either as counsel or as a plaintiff, as the prior non-profit agencies had occasionally done. Current legal advice to the Department is that it likely cannot do so without a change in the ordinance setting out the duties of the Department. In this one respect, absent an ordinance change, it appears that the creation of a County Department of Public Defense has resulted in constraining the independent advocacy capacity of public defenders. To compensate, DPD is cooperating with outside advocacy organizations; for example, outside counsel is currently challenging delays in evaluating and restoring competency of some mentally ill defendants, an issue of concern to DPD. However, there is no question that it would be more effective for the Department to be able to litigate on its own behalf to advance the interests of its clients. To that end, DPD is working with the Civil Division of the Prosecuting Attorney's Office to develop possible legislation making clear that this is one of the duties of the Public Defender.

Time will tell if this structure affords the Department the safeguards it needs to function independent of political influence. However, the first several months of the Department's existence suggest the Executive and Council established a framework that will serve the DPD's clients and the County well.

2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

State Funding

Starting approximately a decade ago, the State began making limited contributions toward the cost of public defense, which is still overwhelmingly borne by counties and cities. Even in areas where DPD contracts directly with the State to provide defender services (e.g., Sexually Violent Predator commitment cases and dependency practice), State funding does not completely support the cost of public defense services in King County, where the cost of living is higher than in other Washington counties. In other areas of DPD, King County receives a pro rata share of state funding distributed annually to all counties for the purpose of improving public defense services. However, the Legislature has not increased its appropriation since 2006, and the funding covers less than 5 percent of trial-level criminal public defense costs statewide.

Assigned Counsel

King County's assigned counsel process is "controlled," within the meaning of this principle. Assigned counsel (members of the private bar) is appointed only when DPD cannot provide representation in-house, due to conflicts of interest or for other situational reasons. The appointments are done by DPD, rather than by the Court. The assigned counsel process is coordinated by a lawyer working in DPD's central administrative offices. In coming months, in a new management structure for the Department, this function may be taken on by different personnel.

DPD plans to make training and performance review of assigned counsel lawyers more systematic and to ensure that assigned counsel are appropriately using investigation, social workers and other support services. In order to ensure quality service by assigned counsel attorneys, it will be necessary to increase payment rates for these attorneys. (See Principle 8.)

3. Clients are screened for eligibility and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.

Screening of clients

DPD, and the Office of Public Defense (OPD) before it, employs several screeners who screen out-of-custody clients to determine eligibility for a public defender. Currently, there are six full-time screeners and two on-call screeners. They have offices in the two county courthouses (Seattle and Kent), as well as in the courthouses in Redmond and Shoreline. (Seattle Municipal Court provides screening services to those seeking an attorney for SMC cases.) Most of the out-of-custody clients who come to the screening office face misdemeanor charges, though some have been charged with a felony. The Department automatically assigns an attorney to people who are in custody and have been charged with a felony.

The number of clients screened has declined in the past year. In 2014, DPD screened 9,000 to 10,000 clients (the vast majority of whom qualified or partially qualified for a public defender). In previous years, the average was around 12,000. DPD staff believe the reduction is likely due to changing charging practices by the Prosecuting Attorney's Office.

Assignment of case to an attorney

DPD's standard is to ensure it has assigned a division and/or an attorney to an in-custody defendant within one business day of the



DPD employee Kim Romero screens a client to determine eligibility.

Department receiving notice that charges have been filed against the defendant. This standard is better than that of some jurisdictions, where an attorney might not be assigned until just before arraignment (sometimes two weeks after the defendant has been arrested and detained). However, defendants in King County are often in custody for 48 to 72 hours before charges are filed, if they are filed at all – a period of time in which most do not have contact with an attorney, despite a court rule that says those arrested have the right to consult with an attorney “as soon as practical” after being taken into custody. This delay is due in part to law enforcement practices; for the

most part, officers only inform defendants that they can consult an attorney in Driving Under the Influence (DUI) cases (when law enforcement is trying to get a reluctant defendant to “blow”). However, if law enforcement were to change practices to comply with CrR/CrRLJ 3.1 (the state rule providing a right to access to counsel as soon as practicable after arrest), DPD would not have the resources to respond to that demand for immediate consultation. A system redesign process is under way to create that capacity, but it may require additional staff.

DPD’s standard – assignment to a division within one business day of charges being filed – is one that it largely meets. When public defense services were handled by the four contracting agencies, the agencies were required to contact in-custody clients within one business day of the assignment. OPD staff would review the agencies annually, ensuring, among other things, that the agencies were meeting the one-business-day requirement. The

agencies routinely did so; OPD’s last review, in 2012, showed the agencies had met the requirement 97 percent of the time. The requirement remains in place now that the agencies are part of a Department. Supervisors within the divisions have established procedures to contemporaneously confirm that the requirement is met and continue to do file checks, looking to see that clients have been contacted within one business day of assignment. However, the divisions have different approaches to the requirement for prompt client-contact. One, for instance, almost always has an attorney make that first client contact; others send a paralegal or legal clerk. This is an area where the Department still needs to achieve standardization and a consistent practice. The implementation of the Department’s new case management system in mid-May, meanwhile, will enable DPD to run reports indicating how well it is meeting its standard requiring prompt client contact after charges have been filed.

4. Defense counsel is provided sufficient time and a confidential space within which to meet the client.

Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.

DPD attorneys generally meet with their clients and interview them shortly after they've been charged and before arraignment (see above). The availability of rooms, offices and booths for confidential access to clients is highly variable, with some courthouses providing adequate meeting places and others not. Perhaps the most challenging courtroom situation is at the Mental Illness Court (often called the ITA – or Involuntary Treatment Act – Court), where civil commitment procedures take place. The two courtrooms are small; one, in fact, is a former waiting area that's been made into a courtroom. Defense attorneys are crammed into small shared offices, two or three attorneys to a room. Attorneys meet with clients in public hallways. DPD has interim plans to address this situation, and a long-term plan (the renovation of Harborview Hall) is in the works, which will provide both clients and attorneys sufficient space. (See Principle 8 – Facilities.)

In the County's other courthouses, the situation varies, depending on the courtroom and the proceeding that is under way. The Maleng Regional Justice Center is the better of the two County courthouses. Most floors have conference rooms adjacent to the courtrooms that an attorney can use. When those aren't available, a resourceful attorney can often find

another room – such as a jury room – for quick client consultations. In the Seattle courthouse, the situation is more challenging, and attorneys often meet with clients on benches in hallways, though there are conference rooms and jury rooms sometimes available there, too. The Kent and Seattle jail both provide booths for attorneys to meet with clients, and attorneys can usually find private meeting areas within the jail. However, there is no viable meeting area for attorneys advising clients on the first appearance calendar or the Seattle Municipal Court jail calendar to consult confidentially with their clients.

Optimally, attorneys meet out-of-custody clients in the attorney's office. While most DPD attorneys have adequate office space, some – including those working in the ITA practice and some of DPD's Kent-based attorneys – do not. Preserving individual, adequately sized offices for DPD attorneys is essential. The Department is working with the Facilities Management Division to lease additional space in Kent until a long-term solution can be found. DPD is looking forward to the redevelopment of the Yesler Building, which promises to provide adequate office space for all staff located in the downtown corridor. (See Principle 8 – Facilities, below.)

5. Defense counsel's workload is controlled to permit the rendering of quality representation.

Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

King County's public defenders, like their counterparts across the country, experience high caseloads and demanding, often grueling schedules. However, our jurisdiction is in a better situation than many, thanks to a case-weighting system implemented several years ago. That case-weighting system gives extra case credit to complex felony cases, acknowledging that not all felonies require the same degree of time and effort. The case-weighting system, coupled with State Supreme Court standards for caseloads for different case types, has helped to ensure that public defenders' workload – while heavy – is controlled.

Still, there is anecdotal evidence that many attorneys carry heavy caseloads, particularly misdemeanor, civil commitment and dependency attorneys. The situation will likely get more challenging, as DPD successfully diverts simpler and less egregious cases out of the system and attorneys face a more difficult mix of cases. Lorinda Youngcourt has had several conversations with her management team, supervising attorneys, line attorneys and others in an effort to better understand and manage caseload. The Department is also in the process of establishing a detailed spreadsheet



Abbey Perkins, an attorney in the County's Mental Health Court, talks to her client shortly before a proceeding.

that gives an accurate snapshot of each attorney's monthly caseload and forecasts the number of cases each can accept in subsequent months so as to stay within caseload standards – a tool that will help supervising attorneys and the senior management team monitor and manage attorney workload. The Budget Workgroup will develop later this year, per Council proviso, a report updating the County's model used to determine staffing needs of the Department.

6. Defense counsel's ability, training, and experience match the complexity of the case.

Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.

Years ago, public defenders in King County and elsewhere advocated for the development of standards in public defense, advocacy that was ultimately successful with the state Supreme Court's adoption of the Standards for Indigent Defense. (See Standard 14.2, Standards for Indigent Defense, Washington State Courts.) These standards, which delineate the qualifications an attorney must possess for each practice area, are considered among the best in the country. DPD carefully adheres to these standards, allowing attorneys to practice in various areas of public defense only if they have met the qualifications laid out in Standard 14.2. Attorneys who are members of the Assigned

Counsel Panel also have to meet these qualifications.

This means that an attorney can represent a defendant in a death penalty case only if he or she has had at least five years of criminal trial experience; prior experience as lead counsel in at least nine jury trials where the cases were serious and complex; prior experience in at least one aggravated homicide case, and more. An attorney can represent someone accused of a Class A felony only if he or she has served two years as a prosecutor or public defender and has been trial counsel alone or with another attorney and has handled a significant portion of the trial in three felony cases submitted to a jury.

Meeting these qualifications alone, however, does not ensure an attorney has the skill and ability to handle the cases to which he or she has been assigned. Skilled supervision, training, adequate resources and manageable caseloads are also essential. These are areas that DPD is actively addressing. Training, in particular, has been identified as an area where a high-quality and consistent program supporting attorneys across the board is in order. (See Principle 9.)



Leo Hamaji, a felony attorney at DPD, makes opening statements in the capital trial for Joseph McEnroe.

7. The same attorney continuously represents the client until the completion of the case.

Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

In Washington, except in appeals from courts of limited jurisdiction to Superior Court, the State Office of Public Defense contracts with law firms outside of DPD to handle direct appeals. DPD attorneys do handle appeals of decisions from courts of limited jurisdiction (known as RALJ appeals), and except under unusual circumstances, the attorney who starts the appeal would conclude it.

Vertical representation is largely observed by DPD except that initial appearances, e.g.,

arraignment calendars in adult criminal courts (for felonies and misdemeanors), are typically handled by a "calendar lawyer" who does not represent clients after that stage of the case. This has been the practice in King County for decades. It may be possible with existing staffing levels to re-organize the structure of representation so that true vertical representation can be achieved. DPD will examine this question in the coming year.

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

In the area of total compensation, DPD's view is that this principle calls for *literal* parity with prosecutors: what they receive in total compensation, defenders should receive (see below for notes on specific application of this principle). The Department is currently engaged in collective bargaining that would provide parity in total compensation. In other areas, e.g., facilities and training, the Department's view is that defenders need *functional* parity. DPD may be able to achieve better results with different tools and resources than the Prosecutor Attorney's Office (PAO) has, because of DPD's different duties, functions and relationships with other entities. For example, defenders need investigation capacity, while prosecutors can rely on outside law enforcement agencies to do similar work. Parity with respect to these other resources means being comparably equipped to do our different jobs.

What follows is a breakdown of some of the major parity issues and an assessment of the current status.

Compensation

It is important to note that DPD lawyers have opposing counsel not only from the PAO but also from the Seattle City Attorney's Office and the State Attorney General's Office. Wages for those other prosecutors' offices differ from those of the King County Prosecutor. DPD assigns attorneys to practice areas regardless of their level of compensation, in order to provide professional development and training for our employees and leadership in each of our areas of practice. Thus, in any given case, an individual DPD lawyer might be sitting across from an individual prosecutor making considerably more than the DPD attorney – or considerably less. Such situations are not a failure of parity. Parity in compensation for

defenders employed by King County means that, as an organization, our attorneys have compensation levels and structures that parallel the King County Prosecutor.

It is expected that parity in wages, leave and benefits (total compensation) will be

substantially achieved when the pending collective bargaining is concluded.

Assigned counsel compensation

Assigned counsel rates in King County need to be examined. As the Public Defense Advisory Board points out in its Annual Report on the State of Public Defense, the current rates are inadequate to ensure consistently high quality representation in cases where DPD cannot keep a case in house. In the coming year, DPD will propose a market survey to determine the appropriate compensation rate for assigned counsel.

Workload

Parity is a less useful concept regarding defender workload in King County than it may be in some jurisdictions. In Washington, public defenders have caseload limits established by order of the Washington Supreme Court. King County has applied and operationalized those in our practice areas. In contrast, local prosecutors operate without fixed caseload or workload limits.

It should be noted that, at the current moment, some DPD supervisors exceed the 1:10 supervisor-to-attorney workload recommended by the Guidelines for Legal Defense Systems in the United States, issued by the National Study



Arthur Almercz helps his client during a probation review hearing in Seattle Municipal Court. An interpreter is on the client's left.

Commission on Defense Services. This deficiency undermines the ability of the supervisor to provide effective guidance and oversight, negatively affecting the supervisor, the attorneys she supervises and their clients.

Other resources: Facilities

Public defense employees in King County continue to work in the former non-profit agency locations. In the downtown corridor DPD is located in five separate buildings, including three of the former non-profit agency locations: the Central, Watermark and Prefontaine buildings. Travel to the courthouse averages about 10 minutes for most of our employees, not including the time to get through screening when they arrive at the courthouse.

King County Ordinance 17882 provided funding to the Department of Executive Services, Facilities Management Division (FMD), for pre-development work associated with the potential redevelopment of the Yesler Building to house DPD as an anchor tenant. The potential consolidation of downtown corridor staff to the Yesler Building not only provides easier access for many public defense employees to the courthouse – a mere four

minute walk away – it also provides an opportunity for standardizing resources and operations throughout the Department, consolidating administrative services, and ensuring parity with the prosecutor’s office for staff representing clients at the King County Courthouse.

Three of the four divisions are located in the same Kent office building; however, the space allocations per employee range from inadequate to adequate. The Department is working with FMD to lease additional space within walking distance of the Maleng Regional Justice Center to improve the space allocation. There is also intent to pursue a consolidated office space for all DPD Kent staff in the future. A consolidated location with adequate space is critical to ensuring the Department meets the intent of this ABA principle.

Employees in the civil commitment area of public defense have insufficient facilities; twelve attorneys are currently occupying three offices at the 9th and Jefferson Building, and support staff is located in the downtown corridor, several blocks west. Harborview Hall development plans include new office space for all public defense employees serving the Mental Illness Court (also known as the ITA Court). In the meantime, the Department is pursuing an option to provide additional space close to the Mental Illness Court. While the employees will continue to be located in two locations, they will have additional space and be within closer proximity to each other and the court.

The Department will continue to review current and future needs in order to make better use of the facilities available and long-term facility plans. Parity with the prosecutor for facilities is dependent on the accomplishment of the long-

term Seattle and Kent facility plans along with Harborview Hall. These major projects will improve the ability for collaboration and standardization throughout the department.

Other resources: Technology

Parity in technology is hard to assess, in part because DPD and the PAO use different models for technology management. King County Information Technology (KCIT) provides computer equipment and network connectivity for both the defense and prosecution. But the PAO uses internal technology staff to maintain its equipment and software systems, while DPD uses the KCIT service model, including an IT Service Delivery Manager who reports to KCIT and DPD and KCIT staff to provide equipment and software support and maintenance.

However, there are some areas where parity is clearly lacking. For instance, when the prosecution provides state-of-the-art courtroom technology that DPD lacks, public defenders can request to use this equipment. It would be far more efficient and achieve parity if the courts, the PAO and DPD could come to an agreement to provide and maintain technology in the courtroom for use by both the defense and prosecution. The PAO also has access to IT analyses via the King County Sheriff’s Office, the state Crime Lab and other entities; DPD has to use outside experts to provide such services. Public defenders also don’t have county-issued mobile phones. This is not necessarily a parity issue; many deputy prosecutors, it appears, do not have cellphones, either. But public defenders, unlike prosecutors, have clients they need to reach at all hours of the day and to whom they should not have to give their personal cellphone number. This is an issue that has been identified by the Public Defense Advisory Board in its State of Public Defense

report and that senior management at DPD has identified as a top concern. Because of the budgetary impact of 200-plus phones, it will take the Department time to adequately address this.

Public defense as an equal partner in improving the justice system

King County defenders in the not-for-profit agencies have long been effective voices on justice system policy issues, but it was sometimes cumbersome to achieve that result, as there was no single coordinated voice advancing the defense perspective. With a strong Public Defender and with the independence protections afforded by the Charter, it should be possible for public defense

to more readily access decisionmakers early on in the policy formation process.

Other County entities, however, may not yet be in the habit of consulting the Public Defender before getting far along with policy development. DPD should be involved early in the formulation of the Executive's justice system policy positions. DPD has conveyed its hope to the Executive's Office of Performance Strategy and Budget that other justice system actors (courts, prosecutor, jail, sheriff) should be strongly encouraged, via the budgeting process or otherwise, to consult early on with DPD when they are contemplating a practice change that would affect DPD clients, the way DPD's work is organized or the volume of DPD work.

9. Defense counsel is provided with and required to attend continuing legal education.

Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.

DPD, and before it, OPD, has long offered continuing legal education (CLE) classes to its public defenders. The agencies, before becoming part of the Department, also put on CLEs for their attorneys. The classes have been excellent and well-received. Attorneys have also greatly benefitted over the years from the Washington Defender Association, which provides an extensive menu of courses and programs; those programs are available to DPD's public defenders, investigators, mitigation specialists and other support staff, all of whom are members of WDA.

The CLE program at the OPD/DPD-level and at

the agency-level, however, has been neither systematic nor comprehensive, as required by this ABA principle. Lorinda Youngcourt, upon her arrival to the Department, quickly recognized the absence of a comprehensive training program as one of DPD's significant unmet needs and has begun discussing her vision for a robust, in-house program with her management team, attorneys and the Public Defense Advisory Board. Her goal is the establishment of a state-of-the-art training and career development program that begins when an attorney comes to work for the Department and continues through his or her career. The cycle of training would support young attorneys



Public defenders, including some from the assigned panel, attend a CLE on representation of veterans.



Training is important for other professionals in public defense. Social workers, shown above, attend a recent all-day class on interviewing techniques.

new to criminal and civil work. It would provide support as they changed areas of practice, moving, for instance, from a misdemeanor practice to a felony practice. And for senior attorneys, courses would enable them to educate themselves on current strategies, developments in forensic science, jury selection and other high-level elements of criminal or civil practice. Senior attorneys would also be expected to train junior attorneys and to offer courses in their areas of expertise. Given appropriate workload levels, the Department, over time, would also foster and develop its own stable of experts in various areas of laws, attorneys who would be leaders not only within the Department but nationally, as well.

To this end, Ms. Youngcourt has identified the need to hire a head trainer, a senior-level manager within the Department with the authority to plan, resource and supervise training. Workload levels will also need to be adjusted, giving attorneys the time they need to attend training programs. It will also be essential that training extend beyond attorneys; investigators, mitigation specialists and other key support staff will need to have appropriate classes and training opportunities made available to them, with the expectation that ongoing education is part of their job.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

The Department is currently standardizing the evaluation process, which was handled differently in each of the four independent agencies that became separate DPD divisions.

Evaluation of the needs of assigned counsel must be enhanced. As mentioned elsewhere, there are widespread concerns that the low compensation rates can create problems in securing high-quality counsel. Assigned counsel performance is not presently systematically reviewed, and there is no defined mechanism or standard for removing a lawyer who is not performing adequately from the assigned counsel panel. DPD's management re-organization will yield a new structure for supervising assigned counsel, including performance reviews.