

King County Department of Public Defense Report on Collateral Consequence Attorneys



King County

**Department of
PUBLIC DEFENSE**

*Upholding the Constitution,
one client at a time.*

**Report to City Council
March 8, 2018**

TABLE OF CONTENTS

I. Introduction..... 3

II. Background..... 3

 A. King County Department of Public Defense..... 3

 B. Collateral Consequences 3

III. Current Data..... 4

 A. Client Demographics..... 4

IV. Areas of Collateral Consequence Attorney Advocacy..... 6

V. Sample Success Stories..... 8

 A. Enforcement of the Fair Chance Employment Ordinance 8

 B. Public Entitlements..... 8

 C. Legal Financial Obligations 8

 D. Ensuring Better Housing Outcomes 8

 E. Protecting Families 9

 F. Criminal Records 9

 G. Employment Licenses 9

 H. Drivers’ Licenses 9

 I. Asset Forfeiture 9

VI. Next Steps..... 10

VII. Conclusion..... 10

I. Introduction

In 2017, the City of Seattle allocated \$440,000 of funding to Criminal Justice Contracted Services for a two-year pilot project for civil legal services attorneys (“Collateral Consequence Attorneys”) to provide services in coordination with the criminal representation provided to Seattle Municipal Court indigent defendants by the King County Department of Public Defense (KC DPD). The funding was a result of the Council’s recognition that there are a large number of unintended collateral consequences that result from a criminal conviction. These consequences were, in most cases, not intended by the legislature and are barriers to people re-entering and rehabilitating.

The initial phase of the pilot project focused on provision of legal advice regarding civil legal consequences of specific plea offers.

Given that the funding is directed to the KC DPD, DPD is expected to report to the City Council’s Committee on Civil Rights, Utilities, Economic Development, and Arts. (CRUEDA). This report is intended to meet the City’s expectation.

II. Background

A. King County Department of Public Defense

Pursuant to the contract with the City of Seattle, the KC DPD legally represents individuals who are indigent and charged with a crime in Seattle Municipal Court. KC DPD attorneys handle approximately 7,500 cases a year from SMC.

KC DPD assigns cases to one of the three divisions that currently work in SMC — Associated Counsel for the Accused Division, Northwest Defender Division, and The Defender Association Division. In order to provide conflict-free representation, the three divisions are separated by “ethical walls” and operate as separate law firms for the purposes of client representation. A client represented by one division cannot be represented by a lawyer from a different division and confidential client issues can only be discussed within that client’s particular division.

B. Collateral Consequences

While KC DPD attorneys have significant expertise in identifying and litigating criminal legal issues (e.g., unlawful searches, unlawfully obtained confessions), these attorneys have significantly less expertise in identifying and mitigating the civil collateral consequences of convictions.

The Council of State Governments has identified over 100 possible collateral consequences for a misdemeanor conviction in Washington.¹ These include the loss of

¹ <https://niccc.csgjusticecenter.org/search/?jurisdiction=48>

professional certifications (e.g., chemical dependency counselor), the loss of a driver's license, and the loss of housing.

The three Collateral Consequence Attorneys have received over 300 referrals from public defenders since joining KC DPD in August 2017. Involvement ranges from advising public defenders to working directly with clients, advising them of their rights, and empowering them to act upon these rights. Oftentimes, during the course of the representation, clients become aware of their rights for the first time regarding housing, employment licenses, visitation of their children, and public entitlements. The Collateral Consequence Attorneys advise clients on lease enforcement, immigration issues, administrative hearings, legal financial obligations, and family law proceedings, among many other issues that accompany clients' criminal charges. Additionally, these attorneys advise public defenders, prosecutors, and clients of the civil consequences attached to a criminal conviction. Even when clients do not secure a legal victory, they have been advised of their legal rights and provided an opportunity to act upon them.

In addition to the work with individual clients, Collateral Consequence Attorneys provide advice to public defenders about innumerable matters ranging from civil rules of discovery to administrative procedure and processes to specific rights held by people deemed incompetent in immigration court. They research and advise based on court and legislative policies. Below are a few examples of the results these attorneys have been able to achieve in their first five months.

III. Current Data

Thus far, the city-funded Collateral Consequence Attorneys have focused on helping KC DPD criminal defense attorneys and their Seattle Municipal Court clients determine plea agreements that help meet the client's needs by taking into account collateral impacts to the client.

Since August, Collateral Consequence Attorneys have provided advice and advocacy to nearly 300 clients regarding the potential collateral consequences of criminal charges they face. This report summarizes client demographics and areas in which clients were provided advice or advocacy.

A. Client Demographics

Of the nearly 300 clients advised by the Collateral Consequence Attorneys, approximately 66.2% of these clients were male and 29.0% were female. Approximately 32.4% of all clients were African-American and 31.4% were white, although the race of a large proportion (28.3%) of clients was unrecorded. Approximately 9.6% of all clients were of Hispanic/Latino origin.

Table 1. Client Gender²

Gender	Clients	Percentage of Clients
Male	194	66.2%
Female	85	29.0%
Trans-female	4	1.4%
Trans-male	2	0.7%

Table 2. Client Race/Ethnicity

Race	Clients	Percentage of Clients
Black/African-American	95	32.4%
White	92	31.4%
Asian	9	3.1%
More than Two Races	7	2.4%
Native American/Alaska Native	4	1.4%
Native Hawaiian or Other Pacific Islander	3	1.0%

Table 3. Client Hispanic Origin

Hispanic Origin	Clients	Percentage of Clients
No	167	57.0%
Yes	28	9.6%

Table 4. Client Immigration Status

Immigration Status	Clients	Percentage of Clients
U.S. Citizen	116	39.6%
Undocumented	13	4.4%
Documented	3	1.0%

Approximately 68.3% of clients were male and 28.3% were female.
Approximately 37.6% of misdemeanor clients were white and 29.8% were African-

² At the time data for this report was compiled, KC DPD Collateral Consequence Attorneys had received just under 300 referrals. The current total is over 300.

American, with 23.9% of misdemeanor clients having an unrecorded racial group. Approximately 12.7% of misdemeanor clients were of Hispanic/Latino origin. Undocumented immigrants comprised 5.4% of KC DPD’s misdemeanor clients.

IV. Areas of Collateral Consequence Attorney Advocacy

KC DPD Collateral Consequence Attorneys have provided advocacy for 205 clients with misdemeanor charges (70.0%), 40 clients with felony charges (13.7%), and 19 clients with ITA charges (6.5%). KC DPD Collateral Consequence Attorneys provided advocacy at the pre-trial phase 33.1% of the time, during post-sentencing 23.2% of the time, and at the plea phase 19.8% of the time. Almost half of the attorneys’ advocacy efforts were providing advice to the defense attorney (49.8%), while 37.5% of the advocacy efforts were providing advice directly to the client. Approximately 24.2% of referrals were related to housing, which included maintaining housing and eviction concerns. Approximately 12.0% of issues were related to employment, which included maintaining employment, maintaining professional licenses (e.g., commercial driving and nursing), and maintaining unemployment benefits. Family issues and public benefit issues each comprised 9.9% of the Collateral Consequence Attorneys’ advocacy efforts. For misdemeanor clients, KC DPD Collateral Consequence Attorneys primarily dealt with issues surrounding housing, employment, and driver’s licenses. For felony clients, KC DPD Collateral Consequence Attorneys primarily dealt with issues surrounding housing, asset forfeiture, employment, and public benefits.

Table 5. Collateral Consequence Attorney Involvement by Case Type

Case Type	Clients	Percentage of Clients
Misdemeanor	205	70.0%
Felony	40	13.7%
ITA	19	6.5%
Dependency	6	2.0%
Mental Health Court	3	1.0%
Family Law	1	0.3%
RALJ	1	0.3%

Table 6. Collateral Consequence Attorney Involvement by Advocacy Stage

Advocacy Stage	Clients	Percentage of Clients
Pre-trial	97	33.1%
Post-sentencing	68	23.2%
Plea	58	19.8%

Sentencing	24	8.2%
Post-time served	20	6.8%
In Custody	2	0.7%
Post-commitment	2	0.7%
ITA	1	0.3%

Table 7. Collateral Consequence Attorney Involvement by Type of Advocacy

Type of Advocacy	Clients	Percentage of Clients
Advised Defense Attorney	146	49.8%
Advised Client	110	37.5%
Brief Services	26	8.9%
Advised Attorney and Client	1	0.3%
Advocacy with Judge	1	0.3%

Table 8. Collateral Consequence Attorney Involvement by Collateral Consequence Type

Collateral Consequence Type	Clients	Percentage of Clients
Housing	71	24.2%
Other	49	16.7%
Employment	35	11.9%
Child and Family Issues	29	9.9%
Public Benefits	29	9.9%
Driver's License	20	6.8%
Record Issues	17	5.8%
Immigration and Travel	12	4.1%
Civil Rights	9	3.1%
Court Admin and Fees	6	2.0%
Asset Forfeiture	5	1.7%
Warrants and Bail	5	1.7%
Care Status	1	0.3%
Debt and Finances	1	0.3%
Discovery	1	0.3%
Insurance	1	0.3%
Officer Misconduct	1	0.3%
Pretrial Negotiations	1	0.3%

V. Sample Success Stories

A. Enforcement of the Fair Chance Employment Ordinance

When an applicant or newly hired employee has a negative report on their employment criminal background check, the employer must provide the individual with an opportunity to explain or clarify prior to rejection. A major regional grocery chain and employer of numerous current and former KC DPD clients fired three clients without affording them the opportunity to explain or clarify their background check out of compliance with the Fair Chance Employment Ordinance. Following discussions between Collateral Consequence Attorneys and corporate personnel, an understanding was reached as to the proper applicability of the Ordinance's notice and opportunity to explain requirements. This resulted in one client (a 21-year-old Caucasian male) being re-hired, a second (a 19-year-old Black/African American female) currently in the re-hiring process, and a third (a Caucasian female in her late 30s) who has been advised of her right to challenge the negative hiring decision.

B. Public Entitlements

The Collateral Consequence Attorneys helped many maintain entitlements or continue applications and appeals for entitlements while in custody.

C. Legal Financial Obligations

Numerous clients have been assisted with negotiating and paying off legal financial obligations, including assistance in dealing with collection agencies and King County's new Unified Payment program.

D. Ensuring Better Housing Outcomes

- An eviction was stopped for a client while they were in custody.
- A 34-year-old single mother of African descent was arrested on an assault charge against the father of her nine-month-old daughter, but the prosecutor declined to file charges and she was subsequently released. Immediately thereafter, she was served with a three-day notice to vacate her apartment. The client vacated the apartment, but she did not know what her rights were or whether she could get back into the apartment. Through negotiations with the landlord's attorney, the Collateral Consequence Attorneys were able to ensure that the client would not have an eviction on her record or be responsible for back rent.
- A resident of a "tiny-home" faced loss of the house if he remained in custody for more than 30 days on a theft charge. The Collateral Consequence Attorney advised the defense attorney and the prosecutor, who agreed to a lesser charge and sentence so the client could keep his home.

E. Protecting Families

A mother facing jail time with no family, friends, or neighbors to care for her child was able to find supportive and stable housing for her daughter to avoid Child Protective Services' intervention and the fear that her daughter would end up in foster care.

F. Criminal Records

- An 18-year-old client was arrested during a police sting operation on massage parlors on the charge of "sexual exploitation." He was traveling to Canada for college on a full-ride football scholarship, but because of the arrest he was denied entry at the border. The Collateral Consequence Attorney was able to confer repeatedly with prosecutors to get a letter explaining he had not been charged, which the client continues to carry with him as he travels between the U.S. and Canada.
- Many clients have been assisted with expunging old charges and advised of the likely consequences stemming from their record.

G. Employment Licenses

- A 32 year old African-American male was charged with a DUI. The client had been employed with a contractor of Seattle Public Schools and was working towards obtaining his teaching certificate. He feared that a DUI conviction would threaten his chance at obtaining those credentials. After advising defense counsel on the potential ramifications of such a conviction, counsel was able to present a compelling case to the prosecutor and negotiate a lesser plea of reckless driving.
- The Collateral Consequence Attorneys have advised numerous clients about the consequences on professional licensure.

H. Drivers' Licenses

- Collateral Consequence Attorneys negotiated a payment arrangement with a collection agency so a client could re-obtain her driver's license.
- Numerous clients have been advised about appealing license suspension and assisted in securing temporary or limited licenses. Maintaining the right to drive has afforded breadwinners and parents the ability to continue providing for their families.

I. Asset Forfeiture

A client who was living in his car with all of his possessions had his car impounded following a DUI. By working with the impound lot and client's family, the Collateral Consequence Attorney was able to get the client's possessions secured prior to being put up for auction.

VI. Next Steps

In phase two of this project, the Collateral Consequence Attorneys will provide representation in civil proceedings. KC DPD will determine if a Collateral Consequence Attorney will represent a client in civil or administrative proceedings based primarily on three factors:

- The client's ability to represent themselves
- The complexity of the case and expertise of the Collateral Consequence Attorneys
- KC DPD resources required to complete the representation

Substantively, Collateral Consequence Attorneys will focus on:

- i. evictions;
- ii. housing discrimination;
- iii. public benefits;
- iv. matters involving no contact or protection orders; and
- v. issues involving licensing, records, and legal financial obligations.

These areas were chosen based on KC DPD's assessment of client needs and the expertise of current Collateral Consequence Attorneys.

VII. Conclusion

KC DPD is grateful for the benefits this pilot project has had for both KC DPD clients and for the people of Seattle. Housing and employment are protective factors against recidivism. The work done by the Collateral Consequence Attorneys to avoid the loss of housing and employment, or other barriers to maintaining housing and employment, keeps us all safer and healthier.

We look forward to building on this work by representing clients in evictions and other civil proceedings.