

# **Budget Report of King County Public Defense Advisory Board**

August 20, 2015



**King County**

## **King County Public Defense Advisory Board**

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## **I. INTRODUCTION**

In the eight months since the King County Public Defense Advisory Board (“Board” or “Advisory Board”) issued its first annual budget report, major changes have taken place in King County public defense. The first public defender, Lorinda Youngcourt, has taken office. A significant restructuring of the Department of Public Defense (DPD) has advanced from the drawing board to the first stages of implementation, initiating improvements in the delivery of legal services to clients and efficiencies for the county.

The transition to an in-house county public defense system is not complete. Additional improvements are anticipated because information that was not available at the time the county’s biennial budget was approved by the Council in November 2014 has now been collected and analyzed by the Public Defense Work Group established by the Council for that purpose. The Advisory Board is optimistic that, with the Executive’s and Council’s support, the Department of Public Defense will continue to provide quality public defense services to thousands of clients and that it will do so more cost-effectively than in the past.

This report is intended to accomplish several tasks. It begins by briefly describing the Advisory Board’s statutory role in public defense budgeting. It summarizes the rigorous process that produced an evidence-based assessment of the Department’s requirements in the form of the *“Report of the King County Public Defense Work Group, June 15, 2015.”* This report concludes by recommending adoption of a supplemental budget consistent with the Public Defense Work Group’s recommendations.

## **II. THE ADVISORY BOARD’S ROLE CONCERNING THE PUBLIC DEFENSE BUDGET**

In November 2013, King County voters amended the County Charter to create the Department of Public Defense and the Public Defense Advisory Board. The Board’s statutory responsibilities include (a) regular review of the activities and plans of the Department of Public Defense, (b) advising the Executive and Council on matters of equity and social justice related to public defense, (c) reporting to the Executive and Council each year on the Board’s review of the Executive’s proposed budget for public defense and the state of county public defense and (d) recommendation of candidates to fill vacancies in the office of public defender. King County Code §2.60.031(A)

This Report is issued pursuant to the Advisory Board’s responsibility to issue an annual report on the proposed budget for public defense. Its starting point is new

information gathered to fulfill the principles for a fiscally responsible public defense program that were developed by the Advisory Board during the 2015/2016 biennial budget process as reported in the *"Budget Report of King County Public Defense Advisory Board, October 31, 2014.*

This Report is also based on the Advisory Board's first regular review of the Department, including its assessment of the progress of the county in promoting equity and social justice related to the criminal justice system as reported in *"The State of King County Public Defense - 2015."*

Finally, the recommendation for a supplemental budget for public defense is based on the facts and analysis reported in *"Report of the King County Public Defense Work Group, June 15, 2015"* led by Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB).

### **III. THE COUNTY'S FIRST BIENNIAL BUDGET, ITS FIRST DEPARTMENT OF PUBLIC DEFENSE BUDGET, AND PROVISOS PROTECTING PUBLIC DEFENSE**

At the time King County's first biennial budget was being developed in 2014, the newly created Department of Public Defense was in a period of major transition. Issues as fundamental as the new Department's future leadership, structure and operations were not yet determined. In this challenging environment, the Department's interim leadership sought to prepare a biennial budget while assuring that effective legal services continued to be provided to thousands of public defense clients. Unfortunately, that effort was severely hamstrung by a model developed for a different purpose -- to provide funding under contracts with the four nonprofits. That model was ill-suited for a unitary department and did not make the vital distinction between caseloads and workloads when considering staffing adequacy.

Against this backdrop and in order to prepare the Advisory Board's first budget report, the members reviewed budget-related data and met with leaders in government and the criminal justice system to understand and evaluate the quality of current public defense services and the adequacy of the proposed biennial budget for public defense. Meetings were held with the Executive, Council members, the PSB Director and staff, the Prosecuting Attorney and Chief Criminal Deputy, presiding judges of Superior and District Courts, the interim Department of Public Defense Director and Deputy Director, Division Directors, individual public defenders and others. Current DPD staffing was evaluated from several perspectives in light of the probability that the structure of the Department would be changing as plans matured. An effort was made to overcome limitations in the outdated and flawed budgeting model.

The Advisory Board also identified foundational principles for maintaining a fiscally sound and independent public defense system that met legal requirements and was aligned with King County's own 2014 Comprehensive Financial Management Policies. Among these principles were:

- The quality and independence of public defense services in King County must be maintained.
- The Department's budget must fund a sufficient number of attorneys and staff to comply with mandatory caseload limits.
- The Department's budget must fund a sufficient number of adequately-staffed divisions to cost-effectively comply with mandatory conflict of interest rules.
- Department funding should be sufficient to ensure that, in all but true conflict cases, assignments will be made to Department attorneys.
- Department funding should be sufficient to attract, develop and retain committed staff to career service positions; the Department should not rely on term-limited positions.
- Department funding should provide parity with the prosecution, recognizing that the prosecution's investigatory burden is borne by law enforcement agencies.
- The budget should include funding for equity and social justice initiatives.

After reviewing data used to prepare the proposed public defense budget and considering the input gathered at meetings with numerous officials, the Advisory Board concluded that the proposed budget did not adequately fund public defense because, among other reasons, essential information necessary for developing a responsible public defense budget was lacking. The Report strongly recommended that public defense budgeting for the new department be evidence-based, driven by accurate information that could become available in the next few months with the benefit of the new case management system. The Advisory Board urged the Council to maintain the status quo, forebear from cutting staff, obtain reliable data and then adjust the biennial budget accordingly.

The Advisory Board applauds the Council for its decision to adopt provisos to the budget that maintained staffing levels within the Department pending a report by the executive branch on the sufficiency of the staffing and other resources. The Executive convened a Public Defense Work Group led by the Director of the Office of Performance, Strategy and Budget, Dwight Dively, to prepare the needed

report. In addition to Mr. Dively, representatives of the Executive, the courts, the Advisory Board and the Department actively participated in the Work Group. A copy of *Report of the King County Public Defense Work Group, June 15, 2015*, is attached to this Budget Report as Appendix A.

#### **IV. THE PUBLIC DEFENSE WORK GROUP REPORT IS BASED ON RELIABLE STAFFING AND OTHER RESOURCE-RELATED INFORMATION THAT WAS UNAVAILABLE WHEN THE BIENNIAL BUDGET WAS ADOPTED**

The Work Group report sets forth the results of seven months of rigorous collection and analysis of public defense workload, staffing and resource-related information. It takes into consideration legal requirements, including caseload limits and conflict of interest rules that are mandated by the Washington Supreme Court. It anticipates changes in structure, policies and operations that have been proposed and are now being implemented by the new Public Defender, Lorinda Youngcourt, in order to improve both the delivery of legal services and efficiency.

Key recommendations of the Public Defense Work Group include the following:

- The Work Group report discusses and endorses the restructuring proposed by the Director to unify the organization, standardize quality assurance, provide conflict-free representation to clients who previously would have been represented by assigned counsel, and manage resources more efficiently and intelligently. Among the anticipated benefits are improved functional oversight, better training, and consolidated administrative functions overseen by a non-lawyer. These goals were identified by the Advisory Board in its report, *The State of King County Public Defense - 2015*.
- Based on a review of actual caseload data for 2014, the Work Group report recommends adjusting attorney, supervisor and support staff levels to align with workload requirements. Specific numbers are set forth and reasons for the proposed staffing levels are given. They include factors as diverse as the number and complexity of cases, the stated goal of avoiding referrals of non-conflict cases to outside lawyers, an anticipated increase in involuntary treatment proceedings resulting from new legislation (“Joel’s Law”) which allows family members to initiate proceedings, and termination of the ambulance service contract for transporting mentally ill hospitalized clients to court. The recommended staffing levels are based on data that was not available and/or not analyzed during the 2014 budget process.
- The Work Group report takes account of staffing inefficiencies that resulted from merging four previously independent organizations. Under the former

system, staff levels were adjusted within each agency/division to meet case demands and supervisory ratios. Under the reorganized system, growth and shrinkage is managed within a single division, better optimizing staffing throughout the entire Department.

- The Work Group report addresses the number of cases assigned to outside counsel. This, along with the composition of the assigned counsel panel, had been an area of concern to judges and the Advisory Board. These issues were discussed in last year's Budget Report and in the Board's Report on the State of Public Defense because, among other shortcomings, there was no Department-level training, supervision or evaluation of outside lawyers receiving cases under the former system. Under a policy recommended by the Public Defense Work Group and being pursued by the new Director, cases will be assigned only where conflicts cannot be handled by Department attorneys or where unavoidable short-term workload surges occur. As the Work Group report notes, "The adopted policy should be reflected in DPD staffing levels and budgets. This should create the opportunity to reduce the budget for assigned counsel."

Other recommendations provide a path to improved training, better hiring practices, more efficient use of space, and exploration of opportunities for other efficiencies and financial savings.

In short, the Public Defense Work Group Report provides the Executive and Council with the budget-related information that was lacking last November. It anticipated that certain constituencies within the Work Group itself might not agree with all the recommendations. In the end, however, all participants in the Public Defense Work Group agreed on all recommendations.

## **V. ADVISORY BOARD RECOMMENDATION**

For the reasons discussed above, the Public Defense Work Group report, commissioned by the Council, provides facts and analysis to support a county public defense program worthy of the citizens of King County. The Advisory Board strongly recommends adoption of a supplemental budget for the Department of Public Defense that is consistent with the staffing, resource and other recommendations contained in the Public Defense Work Group report.