



## King County

### Committee of the Whole

#### STAFF REPORT

<b>Agenda Item:</b>	5 & 6	<b>Name:</b>	Patrick Hamacher, Amy Tsai
<b>Proposed No.:</b>	2013-0108 2013-0109	<b>Date:</b>	March 20, 2013
<b>Invited:</b>	<ul style="list-style-type: none"><li>• Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)</li><li>• Sheryl Willert, Attorney, Williams, Kastner and Gibbs (Special Deputy Prosecuting Attorney for public defense legal advice)</li><li>• Susan Slonecker, Senior Deputy Prosecuting Attorney, King County</li></ul>		

#### SUBJECT

Two ordinances reorganizing the Office of Public Defense and providing funding to finance the reorganization.

#### SUMMARY

As a result of the Dolan lawsuit, the County Executive has proposed changes to the structure for county public defense services. Currently, the County contracts with four non-profit public defense organizations. The Executive's proposal would create a new County Department of Public Defense.

Proposed Ordinance 2013-0108 would create the Department of Public Defense and the Public Defense Advisory Board.

Proposed Ordinance 2013-0109 would provide a supplemental appropriation of \$4.9 million to various capital projects and operating budgets to effectuate the transition to a new model for provision of public defense services.

This is the first hearing on these two proposed ordinances. Analysis is ongoing. They are not yet ready for action.

## **BACKGROUND**

### **Indigent Defense in Washington State and King County**

Public defense services are mandated by the U.S. Constitution, the Washington State Constitution and state law. The Sixth Amendment of the United States Constitution and Article I, Section 22 of the Washington State Constitution guarantee assistance of counsel to every citizen accused of a matter where loss of liberty is possible. The Revised Code of Washington (RCW 10.101.005) states that "The legislature finds that effective legal representation must be provided for indigent persons...consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches."

It is up to each city or county to decide whether to have a public defender office, use assigned counsel, or contract for public defense services. King County provides funds for indigent defense through its own Office of Public Defense (OPD), which is a division within the Department of Community and Human Services. OPD, in turn, assigns cases to four private, non-profit contract agencies (each with its own board of directors). When legal conflicts do not allow the agencies to provide representation, OPD assigns these "conflict cases" to a pool of attorneys in private practice who serve as assigned counsel. The functions of OPD are codified in K.C.C. Chapter 2.60.

### **Dolan v. King County History**

King County has historically contracted with private, non-profit corporations for the provision of most public defense services. Because these corporations were viewed as independent contractors, their employees have not received County benefits, nor were they enrolled for participation in PERS.

In January 2006, a class action lawsuit was filed against King County, alleging that the employees of these agencies were county employees and that King County had a duty to enroll them in the Public Employees' Retirement System (PERS).

In February 2009, Pierce County Superior Court Judge Hickman ruled that, over time, the county had exercised such control over the agencies that they had effectively become county agencies, so that their employees were employees of the County for purposes of enrollment in PERS. Judge Hickman stayed enforcement of his ruling while King County appealed.

In August 2011, the Washington Supreme Court affirmed the trial court's decision in a five to four decision. The Supreme Court ruled that the non-profits were "arms and agencies" of King County, making the employees of those non-profits employees of King County for purposes of PERS enrollment. The County made a motion for reconsideration which was denied, and the case was remanded back to the Superior Court.

In March 2012 the trial court entered an order requiring King County to enroll the current employees of the public defense firms in PERS. Since April 2012, King County has

been making employer contributions to PERS for those employees and the employees' PERS contributions have been deducted from the salaries paid to them by each public defender organization. There is a proposed settlement between King County and the Plaintiffs that must first receive Council approval and then go through a judicial approval process in order to become effective. The settlement agreement would recognize the plaintiffs as county employees on July 1, 2013, but leaves up to King County how public defense would be structured.

In response to the Court ruling and settlement, the County Executive has proposed a public defense delivery model that proposes the creation of a Department of Public Defense. The County Executive has proposed organizing the Department into two major Divisions, one that would handle the bulk of cases and calendar assignments and another that would primarily be designed to handle conflict cases.

#### Proposed Ordinance 2013-0108: Reorganization

On Feb. 15, 2013, in response to a proviso<sup>1</sup> on the Office of Public Defense in the 2013-2014 budget, the Executive transmitted a report on the "Creation of a County Public Defense Agency" (see Attachment 3 to this staff report). The proviso directed that:

*“Should the executive wish to reorganize or restructure the delivery of public defense services, a proposal and rationale for restructuring, with background information, must be presented to the council with sufficient time in advance of the proposed effective date for the new structure for the council to review and approve or reject the proposal after study and a public hearing.”*

The report described a proposed new public defense structure with rationale for the system and background information. It was accompanied by Proposed Ordinance 2013-0108 (code changes pertaining to the reorganization of public defense) and by Proposed Ordinance 2013-0109 (a supplemental budget ordinance to implement the proposed public defense system).

The Office of Public Defense is currently a Division within the Department of Community and Human Services. Proposed Ordinance 2013-0108 creates a Department of Public Defense that would have the following responsibilities:

1. Provide publicly financed legal defense services.
2. Provide those services in an efficient manner.
3. Investigate and determine eligibility for publicly financed legal defense
4. Assign cases to one of the two Divisions
5. Establish and maintain a list of Department credentialed lawyers on an assigned counsel panel.

A draft organizational chart of the proposed two-division model is attached as Attachment 4. There would be a department director, two chief deputies and two assistant chief deputies. Each of the two divisions would have a separate pool of attorneys, supervisors, paralegals, investigators, social workers, and other support staff.

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<sup>1</sup> 2013/2014 Adopted Budget Ordinance 17476, Section 49 (Office of Public Defense), Proviso P1

The Executive aims to have 60 percent of cases handled by one division, 30 percent by the second division (tending to be the more complex cases such as multi-defendant felonies that have a greater likelihood of being conflicted out by the first division), with an estimated 10 percent of cases needing to be handled by the assigned counsel panel when a case is conflicted out by both divisions. This staff report will later discuss the process for getting from the current model to the proposed final organization.

The Department Director would be appointed by the Executive and confirmed by the Council. The Director would have the following responsibilities:

1. Manage the Department.
2. Ensure the Department employs the needed expertise to ensure effective delivery of defense services.
3. Represent the Executive in all forums where the defense perspective is required.
4. Ensure the American Bar Association "Ten Principles for a Public Defense System" guide the development, management and departments standards.
5. Follow Washington State Supreme Court Standards for Indigent Defense in determination of caseloads for attorneys.
6. Develop and maintain standards and guidelines for attorneys and paraprofessionals.
7. Establish a reasonable fee for legal defense services when a client of public notoriety is charged with a crime and the Court finds need.
8. Consult with the Public Defense Advisory Board and receive its recommendations on department policies, operations and matters of budget.

The requirements regarding the ABA Ten Principles and state standards for indigent defense are explained further below.

**Best Practice Principles:** Adopted in February 2002, the American Bar Association's (ABA) "Ten Principles of a Public Defense Delivery System" distills the existing voluminous ABA standards for public defense systems to their most basic elements, which officials and policymakers can readily review and apply. In the words of the ABA Standing Committee on Legal Aid and Indigent Defendants, the *Ten Principles* "constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney." The U.S. Attorney General, Eric Holder, has called the ABA *Ten Principles* the "building blocks" of a functioning public defense system. The ten principles are as follows:

1. Independence of assigned counsel system – The structure of the system should provide a degree of independence from external influence in its operations.
2. Participation of Private Bar and Defender Staff – A separate oversight structure should be established to protect against conflicts of interest. Further, training and resources should provide uniform quality representation.
3. Prompt Appointment of Counsel – Systems should provide for prompt determination of eligibility and appointment of counsel to ensure that clients receive legal representation throughout all proceedings.

4. Sufficient Time and Confidential Meeting Space – The system should require attorneys to communicate regularly and confidentially with clients.
5. Reasonable Workload/Caseload – Systems should measure attorney workload and ensure that adequate time is made available to provide ethical and competent representation.
6. Attorney Qualifications for Case Assignments – Attorneys should be trained and qualified to address the cases to which they are assigned.
7. Continuous Representation by the Same Attorney – The system should appoint attorneys to provide vertical representation throughout the proceedings at the trial level and should have the ability to appoint separately for the purpose of post dispositional proceedings.
8. Parity of Resources with Prosecution and Equal Voice – The defense and prosecution resources should be equal and reasonably compensated. Defenders should have an equal voice in efforts to improve the justice system.
9. Training and Continuing Legal Education – The continued training and education for attorneys should promote appropriate attorney qualification for case assignments.
10. Supervision and Review of Performance – The model for employer-employee supervision should comply with applicable laws and ethical rules.

**Washington State Standards for Defense Attorneys:** The Washington Supreme Court has adopted changes to court rules requiring public defense attorneys to certify to the court that they meet specific standards for indigent defense services. The new standards include guidelines for caseload limits and types of cases; administrative costs, limitations on private practice, qualifications of attorneys, appellate representation and use of legal interns. The standards were authored by the Washington State Bar Association's Council on Public Defense. The new standards went into effect September 1, 2012, except that Standard 3.4 regulating caseload limit guidelines will take effect September 1, 2013, out of recognition of the monetary effect that caseload limits can have on local governments. This will be the first time that actual caseload limits by type have been adopted.

Proposed Ordinance 2013-0108 would also create the Public Defense Advisory Board (PDAB). This board would have the responsibility to:

1. Support the Director of the Department of Public Defense and the independence of the legal practice.
2. Review the activities and plans of the Department and make recommendations to the Director.
3. Advise the Director on matters of concern to the practice of public defense.

The PDAB, as proposed, would consist of seven members nominated by the County Executive and confirmed by the County Council. The allocations of the positions on the board are proposed to be as follows:

1. One member representing the Washington State Bar Association (WSBA).
2. One member representing the King County Bar Associations (KCBA).

3. One member representing a minority bar association (this position would revolve).
4. One member shall be a retired judge from King County Superior or District Court.
5. One member from the faculty of a law school in Washington State.
6. Two members associated with community organizations that serve the indigent population of King County.

The PDAB would meet at least once every two months and issue biannual reports to the County Executive and County Council on the state of public defense in King County. The reports would also contain a review of the Executive's proposed annual budget for public defense.

#### Proposed Ordinance 2013-0109: Supplemental Budget Request

Proposed Ordinance 2013-0109 would provide a supplemental appropriation of \$4.9 million (at a net cost of \$3.1 million) to various capital projects and operating budgets to effectuate the transition to a new model for provision of public defense services.

Proposed Ordinance 2013-0109 requests \$3,157,000 from the General Fund to support \$1,378,000 in transition expenses to create the proposed Department of Public Defense plus \$1,779,000 to be transferred from the General Fund to capital projects to support information technology and facility needs for the transition.

A breakdown of the supplemental request is as follows:

- \$3,157,000 – General Fund including
  - \$1,378,000 Dept. of Public Defense plus 275.00 FTE
    - \$416,000 onboarding personnel
    - \$103,000 supplies
    - \$104,000 contingency of 20% for onboarding personnel & supplies
    - \$755,000 vehicle purchase, 30 vehicles to be transferred to Fleet Admin
  - \$1,779,000 General Fund transfer (see Non-General fund below)
- \$1,779,000 – Non-general Fund including
  - \$1,529,000 KCIT capital projects
    - \$780,000 computers and staff time
    - \$749,000 case management system
  - \$250,000 Building Repair & Replacement
    - \$100,000 planning
    - \$150,000 tenant improvement contingency

This is the first hearing on these two proposed ordinances. This staff report identifies issues areas that are being analyzed by staff and provides background information on these issue areas. These proposals are not yet ready for action.

## **ANALYSIS**

There are six main areas of analysis that have been identified that will be fleshed out over the course of several Committee of the Whole briefings. Those areas include:

- 1) Alternatives – Are there alternative models that should be considered?
- 2) Timeframe – Is the timeframe for migration reasonable?
- 3) Independence – Does the proposed model adequately address the issue of independence of the public defense system?
- 4) Conflicts – Is the proposed model sufficient to handle case conflicts?
- 5) Annualized budget – Is the proposed departmental budget and FTE request reasonable? (Particularly given the unknown status of outside contracts)
- 6) One-time budget – Are the supplemental requests for one-time costs reasonable?

### **Alternatives to the Executive's Proposed Model**

The analysis of alternative models for the structure of public defense services involves consideration of policy, legal and financial issues. For purposes of this analysis, an alternative model is one that has a different underlying structure than the Executive's proposed model, as opposed to slight variations off of the proposed model that may arise as a result of further analysis on the other issues. This topic will be addressed in future staff reports.

This first staff report will focus on a preliminary analysis of issues arising from the Executive's proposed model.

### **Timeframe for Migration**

Proposed Ordinance 2013-0108 does not provide a timeframe for implementation. It is important to note that the Executive expects that the transition from four offices to two divisions would occur over the course of six months to a year. Thus, on July 2, the staff in their existing locations would essentially function as four divisions until the migration can be completed. Council staff have asked for a detailed migration plan that will be presented in the next staff report.

In keeping with the July 1, 2013 employee recognition date contained in the proposed settlement agreement for Dolan (PO 2013-0025), the Executive plans to have substantially completed the steps needed to bring the defender employees onto the county payroll and benefits system by July 1. This includes various steps to be completed by Human Resources and the Finance and Business Operations Division. However, on July 1 defender employees would remain in their current offices and be working on the same cases. They would be consolidated into their new two-division office spaces over time as leasing, technology and caseload issues are resolved.

As the transition begins to occur, there are some preliminary migration steps that the Executive proposes to occur prior to July 1. Items of note include the following:

- Executive will submit Director of Public Defense appointee to the Council for confirmation pending Council adoption of PO 2013-0108.
- Hiring of Division Directors and Assistant Directors is scheduled for April to May with a desired completion of hiring before May. The Executive notes that this date is dependent on Council approval of the proposed structure. This item is particularly problematic as it is highly unlikely that the County Council will act on this item in time for this process to occur on the scheduled timeline.
- Defender cases would be on a single case management system by July 1.
- Decisions regarding continuation of outside contracts (for Seattle Municipal Court and the state Sexually Violent Predator contract) and negotiated contracts if needed would be completed by April to mid-June.

The ability of the Executive to meet these goals will have an impact on the migration plan, costs, and number of employees needed in the system. Council staff are analyzing the proposed sequence of events. For instance, the Executive proposes to retain four offices on July 1 but the two division directors are proposed to be hired before then and will need to be incorporated into the four-office structure until they transition to the two-division structure.

Council staff are also analyzing the potential impacts of failing to meet these deadlines on the Executive's ability to achieve a successful migration within the projected timeframe and budget. The status of the outside contracts in particular, which account for roughly 60 attorneys, could have a significant impact on how many attorneys are needed on July 1 (whether revenue-backed by an outside contract or not). Analysis of county obligations under the outside contracts is continuing.

### Independence

Independence of public defense is the first of the ABA Ten Principles for a Public Defense System. The principle states (breaks added):

- 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.



Independence from judicial influence is not relevant to this analysis as the Executive has not proposed a model with judicial oversight of public defense.<sup>2</sup>

Of the remainder of this principle, the key components of independence are 1) that the hiring, firing, and funding of public defense be independent and free from political influence, 2) that a nonpartisan oversight board can safeguard independence and promote efficiency and quality of services, and 3) that chief defender and staff selection should be merit-based.

### *Independence from Political influence in Client Representation*

The tenet that public defense should be free from political influence has its origins in ABA Standard 5-1.3 "Professional Independence", which is about "the integrity of the relationship between lawyer and client." At the heart of this principle is the idea that defenders must be "free to act on behalf of their clients as dictated by their best professional judgment" with the same freedom as a lawyer whom a person with sufficient means would be able to afford.<sup>3</sup> Another aspect of being independent is to have sufficient funds to "fund the full cost of quality legal representation for all eligible persons" (ABA Standard 5-1.6 "Funding").<sup>4</sup>

### *Oversight Board*

As one means of assuring professional independence, the ABA Independence Principle suggests the establishment of a board of trustees to oversee defense service delivery (selection of the chief defender and general policy responsibilities, not day-to-day operations such as hiring and promotional decisions). Such a board would ideally consist of mostly members of the bar, reflect the racial, ethnic and sexual composition of the client community, and have no prosecutors or judges.

Although the Executive's proposal includes the creation of an advisory board to facilitate independence, the advisory board is comprised of volunteers serving in an advisory capacity to the defense director. That is, the board advises the director on policy; the director does not report to the board. The advisory board would provide an independent advocacy voice for public defense that is outside the hiring and firing authority of elected officials, but the proposed ordinance does not include a mechanism to ensure that the voice would be sufficient to achieve independence in the funding and functioning (allocation of resources) of the office.

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<sup>2</sup> Any proposed role of the judiciary that arises will be monitored by staff. For instance, as one measure of ensuring appropriate resources are available, the Executive's proviso report suggests that one additional mechanism that could be put into place is having the courts approve expert witness expenses.

<sup>3</sup> To achieve this, ABA Standard 5-1.3 recommends that the selection of lawyers for specific cases should not be made by elected officials or the judiciary. Consistent with this standard, King County elected officials do not participate in the selection of lawyers for specific cases.

<sup>4</sup> Again, in this standard it is emphasized that the funding power must not ever interfere with or retaliate against professional judgments made in the proper performance of defense services.

The ABA does not suggest that a board would be the only possible solution. It is noted in the comments to the principle that, in some jurisdictions, public defenders who are either elected or locally appointed have achieved a considerable measure of independence. The ABA notes that it may be possible, but more difficult, to achieve independence if the chief defender is elected or chosen by a political body such as a county council.

The Executive's proviso report identifies several jurisdictions outside of Washington State that have an elected chief defender, including Florida, Tennessee, some Nebraska counties, and some cities including San Francisco. The advantage of an elected official is that the official is then on par with the elected Prosecutor and can be an effective advocate for prosecutor parity, which is also one of the ABA's ten principles. However, as noted in the Executive's report, the Spangenberg Group has found that the process of running for office, raising money and campaigning makes it more difficult to make case decisions free from political influence.

Staff research is continuing on the prevalence of separately elected chief defenders in large jurisdictions across the county that use a county employee defender model, and their successfulness in achieving greater independence.

In developing his proposal, the Executive also reviewed the defense structure of six other counties in Washington State. Pierce County (with 60 to 65 attorneys) and Spokane County (with over 60 attorneys) were the two largest jurisdictions reviewed. They both have an in-house department with a director who reports to the Executive. In Spokane County, the Public Defender is appointed by one county commissioner, one superior court judge and one member of the local bar.

In the Executive's proposal, the Public Defense Director is appointed by the Executive and confirmed by the Council. It is possible that a different appointment process involving a broader range of officials could improve independence. It is one factor that staff will consider as alternatives are analyzed.

### *Employment Security of the Chief Defender*

The ABA further identifies employment security as essential for encouraging professional independence. ABA Standard 5-4.1 "Chief defender and staff" states that the selection of the chief defender should be based on merit, with the chief defender appointed for a fixed term of years subject to renewal. Further, neither the chief defender nor staff should be removed except for good cause.

Under the Executive's model, the Public Defense Director, as the chief officer of an Executive department, is an at-will employee serving at the pleasure of the Executive (King County Charter 550, K.C.C. 3.12.010Y). Staff are analyzing the possibility of making the Public Defense Director an appointee for a fixed term of years subject to removal for good cause, and the effectiveness of this option for achieving

independence. Several examples of this in the county include the County Auditor, Hearing Examiner, Ombudsman<sup>5</sup>, and Board of Appeals and Equalization.

### Conflicts

The Washington State Bar Association defines conflicts of interest in the Rules of Professional Conduct (RPC). RPC Rule 1.7, Conflict of Interest; Current Clients, states that a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Notwithstanding the existence of a concurrent conflict of interest, a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing (following authorization from the other client to make any required disclosures).

According to OPD, the RPC rules are general rules and the applications are more situational and are determined on a case-by-case basis. Presently, OPD initially reviews cases, obtains discovery information as soon as possible, and assigns counsel. If a conflict is identified, then OPD generally strives to first reassign the case to another defender agency. If none of the other agencies can provide the representation, then OPD assigns the case to an attorney on the assigned counsel panel if a private attorney has not been hired by the defendant. OPD maintains a list of independent contract lawyers available to handle cases that agencies cannot accept due to a conflict of interest. This list of independent contract attorneys is known as the Assigned Counsel Panel.

In King County, three common reasons for reassignment of counsel for the accused include: (1) current or former client conflicts – either as a witness, suspect, co-

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<sup>5</sup> Not "for cause," but requires a determination "that he has become incapacitated or has been guilty of neglect of duty, misconduct or political activity" (K.C.C. 2.52.050)

defendant, or victim (53% of conflicts), (2) the court appoints a different agency (11%), or (3) an agency reports an internal conflict (9%).

OPD states that for many years the number of conflicts cases transferred to assigned counsel with four defender agencies has remained steadily in the 8 to 10 percent range. OPD estimates that under the proposed two-division model, conflicts will remain at about 10 percent. Intuitively, one might expect that as four sections are collapsed to two, the number of conflicts would increase as there are fewer alternative sections to transfer cases to prior to resorting to the assigned counsel panel. However, OPD assumes that the initial conflicts levels will hold steady in part because, in the short term on July 1, the offices will continue to function much like they do today. The movement of attorneys into two divisions will occur over time after July 1, allowing for effective transition case assignment planning.

OPD has also identified some factors that increase the conflict rate within the current four defender agencies beyond what might be expected. For example, based on the contracts between the county and a defender agency, some do not provide all services; therefore, there are already fewer than four agency alternatives for some of the conflicts cases, making them more analogous to the two-division model. In addition, OPD also states that each defender agency uses individual databases to manage cases and has its own conflicts policies; OPD believes that moving to a unified case management system and a unified standard for what kinds of situations qualify for conflicts reassignment should allow for more efficient identification of conflicts.

OPD expects that although the migration to two divisions over time may cause an upward pressure in conflicts rates, simultaneously OPD would be working to eliminate inefficiencies in the previous system that would help keep conflicts rates steady. OPD also convened a workgroup in January of this year to develop a common conflicts policy and procedure, and expects to have it developed by the end of March 2013; the workgroup consists of a private bar member and employees from each of the county's current Public Defense Agencies.

Whether OPD's assumptions regarding conflicts are reasonable are being analyzed by Council policy staff and attorneys.

### Annualized Budget Proposal

The Executive's proposed budget for OPD in Proposed Ordinance 2013-0109 remains unchanged from the 2013 appropriation amount of \$41,481,187. In addition to the current OPD staff of 19.75 FTE,<sup>6</sup> PO 2013-0109 requests an additional 275.0 FTE which includes 272 new defense employees brought over from the defender agencies and three unfunded positions to allow flexibility for backfilling attorney positions in anticipation of retiring attorneys. It also requests \$3,157,000 in one-time funding for transition costs (the one-time costs are discussed in the next section below).

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<sup>6</sup> Existing OPD staff are captured in the draft new organizational chart in green (Attachment 3 to this staff report).

It is important to note that the proposed budget is based on 2013 projected caseloads for King County work. It does not include work that might be performed under other contracts such as the defender agency contracts with Seattle Municipal Court and the Washington State Sexually Violent Predator program. That work currently consumes roughly 50 attorneys plus some support staff. If the county were to take on the work of those contracts, OPD would need to request the additional FTEs to accommodate the staffing load. Policy and legal analysis is continuing on those contracts.

Under the terms of the proposed Dolan settlement (PO 2013-0025), public defense employees would become county employees with full benefits for their positions on July 1, 2013, the day after current contracts with the non-profits expire. This includes those public defense employees presently performing non-county (i.e., outside contract) work. There are several variables that make the number of public defense employees continuing after July 1 uncertain. These variables include:

- some defender agency staff may be seeking alternative employment and resign from their agencies prior to July 1,
- roughly 30-40 defender staff are eligible to retire, and
- if it turns out that a defender agency would continue to fulfill the outside contracts, some staff might remain with the agency for that contract work.

A supplemental adjustment to the FTEs will likely be requested as these numbers become better known. If the number of public defense employees migrating to the county employee payroll on July 1 exceeded the caseload and outside contract work needs of OPD, then a process of lay-offs could occur with OPD bearing the cost difference of the extra employees in the interim.

Staff analysis is continuing on the Executive's proposed annual OPD budget, including the reasonableness of assumptions regarding salary and benefits, facilities and leasing, equipment costs, and growth assumptions.

#### One-time Budget Requests

PO 2013-0109 requests \$3,157,000 from the General Fund for transition costs of migrating public defense agency employees to the Executive's proposed two-division model.

Staff are conducting an analysis of reasonableness of these one-time costs. An overview of the requests is presented below.

- Onboarding personnel - \$416,000 + \$83,000 contingency

In preparation for public defense agency employees becoming county employees on July 1, 2013, the Executive proposes to hire some management and administrative positions to prepare for the transition. These positions include:

- Two division directors - receiving county supervisory training, developing and finalizing policies and procedures and becoming familiar with existing public defense staff

- Four staff brought on board to learn county financial, payroll and human resource systems and business processes and preparing to bring the remaining staff on board on July 1
  - Clerical payroll
  - HR Associate
  - Project Program Manager II
  - Public Disclosure Officer
- Four TLTs to manage communication and project management across affected county departments
  - Communications specialist
  - HR Labor Relations
  - 2 Special Projects Managers
- Supplies - \$103,000 + \$21,000 contingency

The start-up costs for the transition include things such as office supplies, desk supplies and kitchen equipment. It assumes the need to provide supplies for 310 employees. Whether the county takes on additional staff to perform outside contract work would be one factor affecting the office supply needs. It is also unknown at this time how much of existing defender agency supplies might be available and in what condition and at what cost.

- Vehicle purchase - \$755,000

OPD estimates that it will need 30 cars for social workers and investigators who spend significant time in the field. The vehicles would be paid for in the OPD budget and the transferred to Fleet Administration.

The decision to purchase vehicles was based on the difficulty the employees would have accessing the central motor pool dispatch from their locations and based on a cost benefit analysis of the cost of purchasing vehicles versus paying mileage. Agency public defender staff currently use their own vehicles and are provided mileage reimbursement by their agency.

OPD estimates \$755,000 as a one-time vehicle purchase cost for 30 vehicles. It estimates \$118,500 in annual fleet maintenance costs, including the cost of replacement. In contract, reimbursing mileage is estimated to cost \$218,939 annually, a difference of about \$100,000 per year. Therefore, in about nine years the investment in vehicles would begin to yield savings.

- Computers and staff time - \$780,000

KCIT is in the process of assessing the current technology inventory of the public defense agencies. The eventual disposition of that equipment and the potential acquisition cost of that inventory to the county is presently unknown. KCIT anticipates that some of the computers will need to be replaced. All will need to be configured for the county network. The request assumes that roughly a third of the existing machines,

or 100, would be replaced in 2013. The request also includes staff time for configuration, some network and server costs, and a 15 percent contingency. KCIT expects to adjust this number as more about the defender agency equipment becomes known. Staff will be obtaining further information on the costs per workstation and how they compare to KCIT central rates.

- Case Management System - \$749,000

Currently, each of the four public defense agencies has its own case management system. The county intends to have at least a short-term solution in place for a July 1, 2013 implementation date. The request funds staff time to gather requirements, select an interim solution license, data migration and training. The proposal contemplates that a different case management solution could be needed for the long-term. Therefore, there could be additional case management system costs beyond this request. Requirements analysis and recommendations for an integrated case management system are expected to be presented to a case management steering committee consisting of agency, KCIT and OPD staff in early March 2013.

- Tenant Improvement Contingency - \$150,000

The state of the current leased space is not fully known to the county at this time. The Facilities Management Division (FMD) contemplates possible need for tenant improvements in the existing defender agency locations such as ADA requirements or needs arising from needing to configure space for separating county and non-county work. Current contracts with the agencies do require ADA compliance.

FMD is currently conducting site visits. Non-binding negotiations with landlords regarding current agency leased facilities are expected to begin in mid to late March 2013. FMD plans to send the Council a notification in May regarding interim facility plans, with signed landlord agreements in place in June.

- Facilities Planning - \$100,000

The request includes \$100,000 to fund planning for the long-term relocation and consolidation of the Seattle offices.

As noted above, Proposed Ordinance 2013-0108 and 2013-0109 are not yet ready for Committee action.

## **ATTACHMENTS**

1. Proposed Ordinance 2013-0108
2. Proposed Ordinance 2013-0109
3. Creation of a County Public Defense Agency – Proviso Response
4. Draft organizational chart
5. Transmittal letter
6. Fiscal notes