

Budget Report of the King County Public Defense Advisory Board

December 2019



King County

King County Public Defense Advisory Board

Matt Adams
Safia Ahmed
Kim Ambrose (Chair)
Hon. Sharon Armstrong (ret.)
Marc Boman
Adam Chromy
Louis Frantz (Vice-Chair)
Sophia Byrd McSherry
Jeff Robinson
John Strait

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I. INTRODUCTION

Pursuant to King County Code § 2.60.031(H), the King County Public Defense Advisory Board (“PDAB”) submits this report to the Executive and the Council on the budget for the Department of Public Defense (hereinafter “DPD” or “the Department”). This is one of two written reports PDAB is required to issue each year.

An adequately funded public defense system is an issue of equity and social justice. DPD clients are all indigent. They are adults and children accused of crimes, parents and children being separated by the state through the child welfare system and adults and children who face involuntary civil commitment based on a mental disability. DPD clients are disproportionately people of color, and disproportionately suffer from mental health and other behavioral disorders. The County’s commitment to equity and social justice should be clearly reflected in its funding commitment to DPD.

This report will be brief, as this is an off year in the County’s biennial budget cycle; however, we will highlight pressing issues that will need to be considered in the next biennium.

II. THE 2019-20 BIENNIAL BUDGET

In its 2018 Budget Report in response to the Executive’s proposed 2019-20 Budget, PDAB raised two issues of concern: (1) implementing long-overdue increases in the rates paid for work performed by the Assigned Counsel Panel¹ and (2) ensuring that the baseline funding for DPD is based on an appropriate staffing model. The 2019-20 Budget addressed these issues by: (1) increasing the Assigned Counsel Panel rates, but not to the level recommended by PDAB and DPD; and (2) postponing any staffing cuts until a workgroup could address adjustments to the staffing model.

III. THE SUPPLEMENTAL 2019-2020 BUDGET

As planned, a workgroup was convened by DPD and the Office of Performance, Strategy and Budget (“PSB”) to address whether the previously proposed staffing cuts (8 FTE) were justified. The workgroup agreed that updated data indicated the proposed cuts were not warranted under the staffing model and staffing should be adjusted to current trends in felony, family defense and Involuntary Treatment practice areas. On November 20, 2019, the Council approved a supplemental budget which provided for these staffing adjustments.

IV. ASSIGNED COUNSEL RATES HAVE IMPROVED, BUT STILL REMAIN LOW AND MUST BE INCREASED IN ORDER TO MAINTAIN QUALITY LEGAL REPRESENTATION FOR ALL INDIGENT ADULTS AND CHILDREN

¹The Assigned Counsel Panel includes experienced private attorneys who provide contracted public defense services when DPD is prevented by ethical rules from representing clients due to conflicts of interest or when DPD is over caseload capacity.

**IN KING COUNTY WHO FACE PROSECUTION OR FAMILY SEPARATION
BY THE CHILD WELFARE SYSTEM.**

The 2019-20 Budget included the first increases in Assigned Counsel Panel rates since 2004. These increases were significant and necessary in order to attract and retain qualified attorneys. However, the increases fell below those requested by DPD and recommended by PDAB, which reflected the increase in cost of living in King County, rates paid in other counties and the seriousness of the cases for which legal services are required.

**Department of Public Defense
2019-2020 Adopted Rate Increases for Assigned Counsel Panel by Case Type**

Case Type	2018 DPD Rate Budgeted²	DPD Proposed Rates	Executive Proposed Rates Adopted	Variance to DPD Proposed Rate
Becca - ARY	\$ 40	\$ 65	\$ 65	\$0
Becca - CHINS	\$ 40	\$ 65	\$ 65	\$0
COC Child Support	\$ 40	\$ 65	\$ 50	(\$15)
COC Private NonChild Support	\$ 40	\$ 65	\$ 50	(\$15)
Dependency Child Rep	\$ 40	\$ 65	\$ 50	(\$15)
Dependency Child Rep Term	\$ 40	\$ 65	\$ 55	(\$10)
Expedited Calendar	\$ 45	\$ 65	\$ 45	(\$20)
Felony - Class A	\$ 50	\$ 90	\$ 75	(\$15)
Felony - Class B	\$ 50	\$ 75	\$ 65	(\$10)
Felony - Class C	\$ 50	\$ 75	\$ 60	(\$15)
Felony B - Life	\$ 75	\$ 90	\$ 75	(\$15)
Gross Misdemeanor	\$ 45	\$ 65	\$ 55	(\$10)

² This rate reflects what was budgeted through the General Fund; however, some of the rates (e.g., Class A Felonies) were temporarily supplemented through funding from the State Office of Public Defense Improvement Grant.

ITA - Mental Health	\$ 50	\$ 65	\$ 65	\$ 0
Juvenile Felony A	\$ 50	\$ 90	\$ 75	(\$15)
Juvenile Felony B	\$ 50	\$ 75	\$ 65	(\$10)
Juvenile Felony C	\$ 50	\$ 75	\$ 65	(\$10)
Juvenile Misdemeanor	\$ 50	\$ 65	\$ 55	(\$10)
Material Witness	\$ 50	\$ 75	\$ 50	(\$25)
Misdemeanor	\$ 45	\$ 65	\$ 55	(\$10)
Misdemeanor Appeal	\$ 45	\$ 65	\$ 45	(\$20)
Investigator Rates	\$30	\$40	\$40	\$0

In implementing these increases, the Council approved the rates requested by the Executive which corresponded to the highest rates paid in neighboring Pierce and Snohomish Counties. While these increases were significant – between 20 and 50% – it is important to note that King County employees have received cost of living increases totaling 48% since 2004. Estimates of the actual increase in the cost of living in King County are over 60%.³ Furthermore, the County rates that the increases sought to “match” came from Pierce and Snohomish Counties, both regions with significantly lower costs of living.

For some practice areas, including children’s representation in family defense and misdemeanor defense, the hourly rate increases were 25% or less. The abysmal rates for dependency counsel representing children are particularly troubling, given the life-altering consequences for children who are placed in foster care and the complexity of the practice area. The distinction between dependency proceedings (\$50 per hour) and termination of parental rights proceedings (\$55 per hour) ignores the significance of the initial decision to remove a child at the dependency stage. These low rates do not comport with the County Executive’s Equity and Social Justice Strategic Vision, which is to invest “upstream and where the needs are greatest.”⁴ Not only do these inadequate rates make it difficult to attract and retain quality counsel, they communicate a message to children in the child welfare system where the County is making a significant investment in a new state-of-the-art courthouse (Children and Family Justice Center) to house the removal proceedings without making an adequate investment in the

³ This is based on the “Self-Sufficiency Standard,” the measure by which a family can meet its basic needs. Between 2006 and 2017 this measure increased by 62% in King County. Diana M. Pearce, PhD., *The Self-Sufficiency Standard for Washington State 2017*, prepared for the Workforce Development Council of Seattle-King County, September 2017 found at http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017_SSS.pdf (last accessed December 1, 2019).

⁴ King County Executive Equity and Social Justice Vision found at <https://www.kingcounty.gov/elected/executive/equity-social-justice/vision.aspx>, last accessed on December 1, 2019.

quality of advocacy for impacted children.⁵ The rates for attorneys representing children in dependency proceedings are lower than almost every other practice area, including adult misdemeanors, At-Risk Youth (“ARY”) and Children in Need of Services (“CHINS”) proceedings.⁶

In fact, according to the Department’s Assigned Counsel Coordinator, DPD has struggled recently with attracting and retaining counsel under the current low rates. Qualified criminal defense attorneys can earn \$148 per hour for representing indigent adults and juveniles accused of felonies in federal court – nearly twice what King County pays its assigned counsel for the most serious cases. The shortage of qualified attorneys willing to accept cases has become particularly troubling given the recent spike in felony filings, discussed below, which has led to the unfortunate need to rely on assigned counsel for capacity reasons.

V. THE CURRENT STAFFING MODEL MUST BE REEVALUATED TO ALLOW DPD MORE FLEXIBILITY TO RESPOND TO SUDDEN CASELOAD INCREASES, CHANGES IN EVIDENCE AND THE HOLISTIC NEEDS OF CLIENTS.

Beginning in July 2019, felony filings by the King County Prosecuting Attorney’s Office (“KCPAO”) dramatically increased in both Seattle and Kent. This trend continued for four months, adding hundreds of cases to DPD’s workload. Since the DPD budget is based on past caseload trends, this unexpected onslaught of cases has caused significant pressure on DPD staff at every level. DPD staff will be overwhelmed as a result of these filings well into 2020. The KCPAO controls the flow of cases and described the spike to PDAB as “clearing a backlog of cases” – something that is not uncommon, but also not necessarily done at predictable or regular intervals.⁷ This underscores the need for a more flexible staffing model for DPD, and also reveals why it is difficult to create standards for parity between the prosecution and defense function.⁸

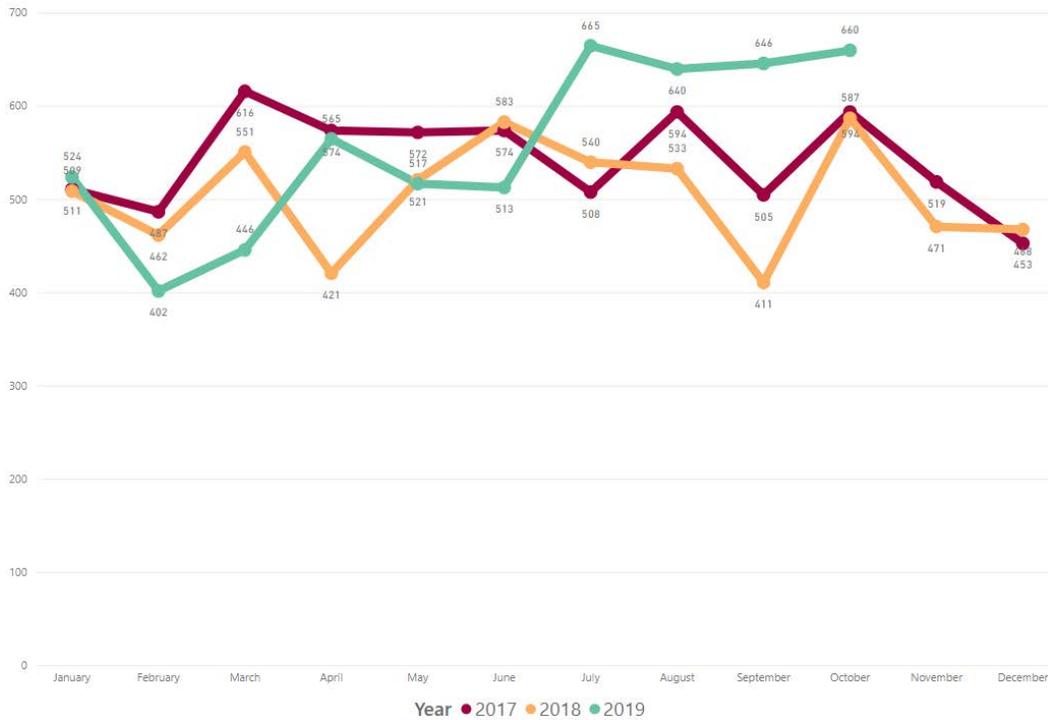
⁵ The Children and Family Justice Center will handle a portion of the King County dependency cases. A majority of the dependency cases in King County are adjudicated at the Norm Maleng Regional Justice Center in Kent.

⁶ ARY proceedings, initiated by parents, do not involve placing children outside of their home. CHINS proceedings, initiated by children or parents, involve out-of-home placement not to exceed 6 months.

⁷ PDAB interview with KCPAO leadership on the state of public defense, October 29, 2019.

⁸ Principle 8 of the ABA Ten Principles of a Public Defense Delivery System requires “parity between defense counsel and the prosecution with respect to resources.” In July 2018, the Office of Performance, Strategy and Budget released a report concluding that because the functions of DPD and KCPAO are so different, their work “generally cannot be compared for parity beyond compensation.” *Parity between the Prosecuting Attorney’s Office and the Department of Public Defense Proviso Response*.

The following chart depicts felony filings in King County in 2017, 2018 and 2019.



Although the current staffing model provides for adjustments based on “external factors” such as FMLA, attorney rotations, on-call duty and overage, experience with the model tells us that it still does not adequately account for the reality that attorneys and support staff cannot operate at the top end of the caseload standards. A supplemental credit policy provides some ability to account for differences in case complexity, but the caseload standards continue to operate as a “floor” when they should operate as a “ceiling.” The “overage” external factor has been set at just 3%, which allows for almost no room to absorb spikes in case filings. In addition, the model is based on annual trends which have been shown to be inaccurate. These concerns with the staffing model put pressure on DPD staff and threaten the quality of representation that DPD clients receive.

Some adjustments have been made to the staffing model since it was initially developed. With four years of experience and data, it is time to reevaluate whether these adjustments are adequate.

The County should follow the lead of other jurisdictions and conduct a Delphi Study. The Delphi approach to estimating the amount of resources needed for a future project was initially designed by the RAND Corporation for the U.S. military and has proven highly reliable compared to other methods in a wide variety of applications. The Delphi Studies of public defense provide resource/time expectations based on case type, so caseloads are not, as they currently are in King County, determined by the actual time worked by a specific attorney on a

specific case. Weighting case type rather than measuring hours worked provides much more consistency and predictability in assessing staffing needs.⁹

In addition, there is broad recognition that changes to police practices, including the addition of police body and dashboard cameras, has increased the workload of defense investigators and support staff. The current 1:4 ratio for investigators to attorneys must be re-evaluated in light of the hours that must be spent locating and reviewing video footage. In addition, there are not consistent staffing ratios for mitigation specialists. Mitigation specialists are professional staff who gather invaluable information about the complex backgrounds and needs of indigent defendants caught in a variety of legal proceedings. Their involvement in cases can be critical to resolution. Furthermore, King County's housing crisis and the State's inability to meet mental health needs also compel a new approach to staffing ratios for mitigation specialists and support staff so that DPD can develop a holistic model to pursue meaningful solutions for DPD clients.

VI. ADDITIONAL FUNDING WILL BE NECESSARY FOR DPD TO CONTINUE PROVIDING REPRESENTATION FOR FAMILIES IN INQUEST PROCEEDINGS.

Beginning in 2019, the Department began representing families in inquest proceedings.¹⁰ These cases originated in previous years and were placed on hold pending new policies and procedures issued by the King County Executive. These proceedings have proven to be significantly resource intensive. Because of the felony filing surge discussed above, DPD management (namely, La Rond Baker, Special Counsel for Affirmative Litigation and Policy) has been handling inquests. Approximately half of her time has been devoted solely to inquest related work.

The number of officer involved fatalities has remained fairly consistent over the years.¹¹ DPD is not adequately staffed to do inquest representation and, if it is going to continue to do so, must be provided with additional dedicated resources.

⁹ For a description of the Delphi model and its application to a public defense system see [The Colorado Project: A Study of the Colorado Public Defender System and Attorney Workload Standards](#), conducted by Rubin Brown and The ABA's Standing Committee on Legal Aid and Indigent Defendants, August 2017 (last accessed December 2, 2019). Other jurisdictions that have undertaken such studies include Louisiana, Michigan, Missouri, Rhode Island, Tennessee, and Texas, among others.

¹⁰ When law enforcement is involved in a citizen fatality, county ordinance and executive policy provide for an inquest process – a legal proceeding to examine the facts surrounding the death. On January 29, 2018, the county council adopted King County Ordinance 18652 which tasked DPD with providing legal representation for families of the decedent in these proceedings.

¹¹ The [King County Inquest Program](#) website reports 7 current inquests and 1 reported death. According to a media report in May 2019, 12 officer involved deaths were pending in King County. [King County reinstates police deadly-force inquests following overhaul](#), Seattle Times, May 30, 2019. Officer involved deaths have remained fairly consistent over the years. [Number of deadly police shootings in King County is little changed over past 12 years](#), Seattle Times, July 9, 2017.

VII. ADVISORY BOARD RECOMMENDATIONS

The Advisory Board recommends that in the next biennium budget, the Executive and Council support increases in the rates paid to the Assigned Counsel Panel consistent with the requests made by DPD for 2019-20.

In addition, the Advisory Board recommends that PSB and DPD commit to partnering with the American Bar Association and implementing a Delphi Study for public defense in King County. The goal of the partnership should be to ensure that DPD clients receive consistent quality legal representation while the County makes meaningful progress on its strategic vision of equity and social justice.

Finally, the Advisory Board recommends that the County fund DPD with at least a .5 FTE attorney to represent families in inquest proceedings.