

KING COUNTY PUBLIC DEFENSE ADVISORY BOARD

PUBLIC DEFENSE ADVISORY BOARD FALL 2018 BUDGET REPORT

INTRODUCTION

The Public Defense Advisory Board (“the Board”) has reviewed the Executive’s proposed 2019-2020 budget for public defense and, consistent with its responsibilities pursuant to section 2.60.031(H) of the King County Code, submits this report to the Executive and the Council. This brief report will focus on two topics that have been matters of concern for the Board since the creation of the Department of Public Defense (“DPD”): (1) ensuring that the baseline funding for DPD is based on an appropriate staffing model and (2) implementing long-overdue increases in the rates paid for work performed by the Assigned Counsel panel. We will also address one additional topic, the importance of preserving DPD’s ability to retain its collateral consequences attorneys.

THE BOARD ENDORSES THE DECISION TO REVIEW THE DPD STAFFING MODEL TO ENSURE THAT IT ACCURATELY REPRESENTS THE COMPLEXITY OF THE DEPARTMENT’S CURRENT BODY OF WORK

As the Board understands it, the Executive initially proposed staffing reductions that would have taken effect in January 2019, but, after consultation with DPD leadership, deferred any such reductions until January 2020. In the meantime, DPD leadership will work with the Department of Performance, Strategy and Budget (“PSB”) to examine the current staffing model and determine whether revisions are necessary before any staffing changes go into effect. The Board believes it is wise to provide this period of further consideration and, having worked with DPD and PSB to design the current staffing model, the Board will be glad to participate in the current re-examination if it would be helpful.

The staffing model was based on the best understanding of DPD’s needs at the time it was developed. Given the limitations of the data available at that time regarding DPD’s operations, we would not be surprised if the model failed to fully capture important aspects of the work. We appreciate the importance of getting better-quality data from DPD to make these determinations, but we want to emphasize the destabilizing effect of work force reductions. The staffing model for most non-attorney positions within the Department is pegged to the number of attorneys, so any error in calculating the number of attorneys needed affects other employees as well.

There have also been changes in the nature of DPD’s practice that may require revisions to the staffing model. The increased volume of discovery from body-worn cameras has resulted in considerable -and unprecedented – burdens on the staff investigators. The board has received reports that DPD has identified that an increasing number of clients experience mental illness in ways that require extra time and effort from attorneys, mitigation specialists, and the rest of the DPD team. The board has also been informed that changes in charging patterns, including the increased use of diversion for minor cases and an increase in the filing of DUI cases (which are complex), has resulted in misdemeanor caseloads that, although within the state standards, are considerably more demanding than when the model was created. Again, this is something that should be carefully examined. The Board understands that DPD leadership is working carefully with the Managing Attorneys and frontline supervisors to more consistently supervise the distribution of cases to improve overall management of work, but such improvements will not be sufficient if the assumptions built into the model are incorrect as to the intensity of the effort required.

KING COUNTY PUBLIC DEFENSE ADVISORY BOARD

The standards provide that “At least one full-time legal assistant should be employed for every four attorneys.” While DPD is substantially in compliance with the standards with regard to caseload-carrying attorneys, no support staff is provided for calendar attorneys. The Bar standards does not exclude calendar attorneys from the determination of appropriate staffing and, indeed, DPD currently uses support staff to assist with calendars. As a result, DPD does not have sufficient support staff.

THE DEPARTMENT’S PROPOSED RATES FOR ASSIGNED COUNSEL ARE NECESSARY TO BRING THE COUNTY INTO COMPLIANCE WITH THE ABA’S TEN PRINCIPLES

The Executive’s proposed pay increases for assigned counsel represent a positive development after more than a decade in which these attorneys received no cost-of-living or other ongoing rate increases, but the proposed rates still do not fairly compensate these attorneys. Simply put, the Executive’s proposed increases are inadequate to enable the panel attorneys to cover their costs and maintain a reasonable standard of living. Accordingly, we urge the County to increase the rates for assigned counsel to the levels proposed by the Department.

The legislation creating the Department committed the county to adhering to the American Bar Association’s [Ten Principles for a Public Defense Delivery System](#). Per Section 2.60.026(A)(4) of the King County Code, the DPD Director is responsible for ensuring that the principles “guide the management of the department” and for reporting to the council each year on the results of her efforts. Principle Eight requires parity between defense counsel and the prosecution. The Council has committed itself to salary parity for DPD employees. However, DPD employees cannot represent every client in the county, for reasons of conflict of interest and capacity. Accordingly, the assigned counsel panel attorneys perform an essential role in the system. In the comments to Principle Eight, the ABA stated that “[a]ssigned counsel should be paid a reasonable fee in addition to overhead and expenses.”

The Board has highlighted the inadequacy of the existing rate structure since its inception. In our 2015 Annual Report, we stated:

The Executive’s hourly rates alone appear inadequate to pay for the attorney’s time, office space, technology, email, phone and basic supply and personnel resources normally associated with quality criminal defense representation. Consequently, the extent to which individual panel attorneys are able to provide quality representation on a par with the Department’s attorneys will likely depend, at least in part, on (a) the extent to which income from other sources, primarily private clients, allows panel attorneys to pay for resources to support public defense cases and (b) the panel attorney’s own willingness to devote time and resources to cases in which they are poorly compensated.

With rates unchanged two years later, we returned to this topic:

DPD requested a modest COLA increase to these rates for the 2017-2018 biennium but that rate increase was not approved. Given that these attorneys have not had a COLA increase for over a decade, these dedicated attorneys are long overdue for a compensation increase. As we stated in our 2016 Budget Report, “Without setting reasonable compensation rates, the efforts that DPD is taking to address the quality and consistency of the services provided by assigned counsel will be diminished. The PDAB also believes that this is an issue of equity and social

KING COUNTY PUBLIC DEFENSE ADVISORY BOARD

justice -- both for the contracting attorneys who should be fairly compensated and the indigent defendants who deserve consistent, high quality representation.”

In light of the failure to institute adequate rates, the Board concluded that the county was not in compliance with Principle 8.¹

Department leadership reports that some of the most capable attorneys on the panel, often former full-time public defenders, accept one or two cases, as a reflection of their commitment to quality public defense, but do not take more because of the inadequate rates. In addition, the low rates are an obstacle for attorneys from diverse backgrounds, especially including those who come into practice with fewer financial resources to draw on. Such attorneys may be strongly interested in this work, even to building a career in it, but cannot get started with any sort of stability because the rates do not enable them to meet core expenses.

Viewed against the backdrop of the long period of stagnation, including the failure to even include cost-of-living adjustments, the proposed increases fall short in most categories of compensating assigned counsel for the current and anticipated future costs of providing quality public defense services over the next biennium. For King County to have a panel of qualified attorneys properly resourced to access necessary support services, it should adopt a budget that compensates panel attorneys at the levels proposed by DPD, as shown in the chart below:²

Case Type	Executive’s Proposed Rates (\$/hour)	DPD and PDAB Proposed Rates (\$/hour)
COC Child Support	50	65
COC Private Non-Child Support	50	65
Dependency	50	65
Dependency Child Rep	50	65
Dependency Child Rep Termination	55	65
Dependency Termination	55	65
Expedited Calendar	45	65
Felony - Class A	75	90
Felony - Class B	65	75

¹ The Board also addressed this issue in its 2017 Budget Report, stating that “the hourly rates paid to King County assigned counsel panel attorneys are unreasonable given that (1) they have not been raised to account for the rise in cost of living for more than 10 years and (2) they are lower than rates paid in neighboring counties with lower cost of living than King County.”

² This chart does not include case types where DPD does not seek a greater rate than that proposed by the Executive (viz., Becca-ARY, Becca - CHINS and ITA - Mental Health).

KING COUNTY PUBLIC DEFENSE ADVISORY BOARD

Felony - Class C	60	75
Gross Misdemeanor	55	65
Juvenile - Felony A	75	90
Juvenile - Felony B	65	75
Juvenile - Felony C	65	75
Juvenile Misdemeanor	55	65
Material Witness	50	75
Misdemeanor	55	65
Felony Life B	75	90
Misdemeanor Appeal	45	65

The Board believes the reasonableness of the DPD-proposed rates can be seen by asking whether it is reasonable to compensate an attorney retained to represent a client on a felony charge, with all of its potential consequences across all aspects of a client’s life both immediately and long thereafter, at a rate between \$60 and \$75, depending upon the class of the case. Likewise, the critical nature of family defense work, representing parents and children, warrants an increase and a single rate across both dependency and termination proceedings.

Assigned Counsel Compensation Should Come From a Stable Funding Source, Not Grants.

While the Department works to maximize the use of DPD personnel and resources to meet the County’s public defense needs, a significant number of cases must be referred to assigned counsel each year. Maintaining a large enough cadre of pre-screened panel attorneys willing to step in to meet this need is critical to meeting the County’s public defense obligations. These attorneys deserve the assurance that their compensation, like that of DPD attorneys, will not be dependent from year-to-year on the vagaries of a grant application and selection process.

Because payment for panel attorneys’ services is an essential, recurring County obligation required by Principle 2 of the *ABA’s Ten Principles of a Public Defense Delivery System*, the Public Defense Advisory Board believes that funding for these services should come from a stable, recurring funding source, the County’s general fund. The state’s Public Defense Improvement Grant (PDIG) program is an invaluable source of funding for public defense services, but we urge the County to enable the Department to use those funds for other services.

The county should fund the department in a way that enables the department to retain the collateral consequences attorneys currently working there.

The Department took a major step toward the sort of holistic representation that characterizes the best public defender offices in the country when it hired attorneys with expertise in civil legal matters who were able to support the DPD attorneys so that the decisions made in criminal cases would mitigate or

KING COUNTY PUBLIC DEFENSE ADVISORY BOARD

avoid altogether the harsh and unnecessary consequences of criminal convictions. In doing so, these in-house experts both help individuals clients retain housing and/or jobs and also keep our community safer. At the outset, the Department paid for these positions with a contract from the City of Seattle. With contract due to expire, the Department seeks to shift funds from the state Public Defense Improvement Grant to continue this important work. If the Department's budget fully covers the costs of the assigned counsel panel, as it should for the county to satisfy its obligations, the Department would continue to use the PDIG money to retain these attorneys and their essential contributions to quality public defense.

CONCLUSION

The Board appreciates the many ways in which county leadership continues to bolster the efforts of DPD leadership and staff as the department develops. The Board is also aware of the fiscal challenges the county faces in the coming biennium. The Board looks forward to dialogue with all involved as the process moves forward.

October 8, 2018