



## KING COUNTY AUDITOR'S OFFICE

# Public Defense: Weak Governance Hinders Improvement



**King County**

JUSTIN ANDERSON  
GRANT DAILEY  
MIA NEIDHARDT  
KAYVON ZADEH

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### EXECUTIVE SUMMARY:

The Department of Public Defense (DPD) has not effectively managed its transition from four nonprofits into a unified, high-performing department. The costs of providing public defense are significant, with King County spending \$72 million on the service in 2017. Although DPD's processes and roles have advanced since the 2013 merger, it still has a fragmented organizational structure and a weak management framework. This results in inconsistent case practices and case outcomes across the department's four divisions. We recommend that DPD drive consistency in client representation and the effective use of county resources by applying a strong management framework.

# Public Defense: Weak Governance Hinders Improvement

## REPORT HIGHLIGHTS

### What We Found

The Department of Public Defense (DPD) has not effectively managed its transition into a unified, high-performing department. It is missing key organizational tools like a robust strategic plan and ways to track and improve performance. This lack of direction impedes DPD's ability to accurately predict its resource needs, ensure consistent client representation, and determine the optimal organizational structure.

King County spent \$72 million on public defense in 2017. Although efforts to meet caseload standards and ensure equal pay with Prosecuting Attorney's Office employees drove budget increases, DPD has not created reliable measures of its work. DPD's caseload has not grown significantly since its formation, and the model that drives DPD's staffing may perpetuate inefficiencies and inaccurately predict resource needs.

Gaps in basic management processes make it difficult for DPD to ensure consistent practices and outcomes across its four divisions. DPD does not have established procedures or standards to promote consistency across the department, meaning similarly situated clients served by different divisions may receive a different quality of service. Because information about cases is not easily accessible outside the divisions, the DPD Director's Office is limited in its department oversight; for example, evaluating performance or making informed changes to ensure departmental success. In some cases, available data is not reliable due to data entry problems.

Despite DPD's stated goal to keep as many cases in-house as possible, the current organizational structure results in more cases being sent to outside counsel than necessary. The current structure also creates other logistical barriers for DPD.

### What We Recommend

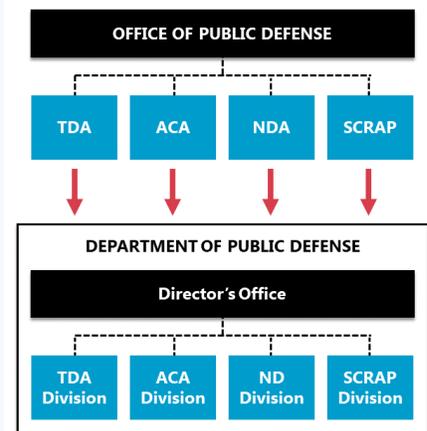
We recommend that DPD develop a comprehensive governance framework to drive consistency and the effective use of county resources across the department.

### Why This Audit Is Important

The Department of Public Defense provides legal counsel for some of King County's most vulnerable populations. The right to legal representation is guaranteed by both the United States Constitution and the Washington State Constitution.

As a result of a 2013 lawsuit, King County incorporated four nonprofit organizations to establish the Department of Public Defense.

DPD divisions consist of former contractor nonprofit agencies, now merged into the department



Source: King County Auditor's Office

Implementing our recommendations will help ensure that DPD is providing representation that meets King County's standards of consistency and quality along with good stewardship of public funds.

# Public Defense: Weak Governance Hinders Improvement

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# Change Management

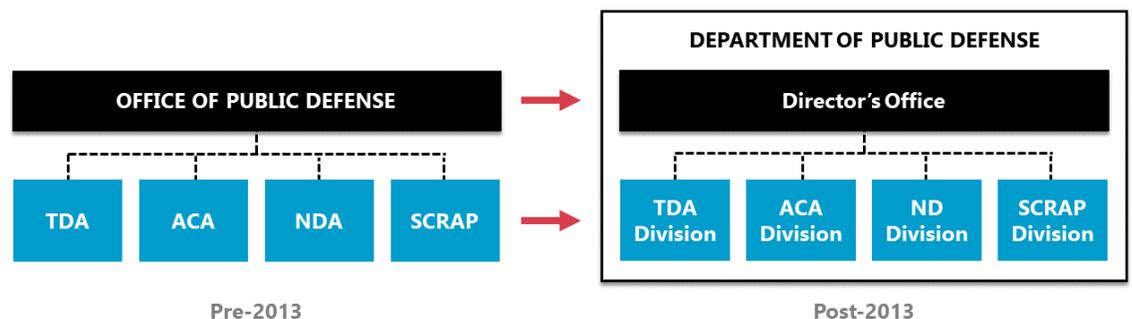
## SECTION SUMMARY

**The Department of Public Defense has not effectively managed the transition from four nonprofits into a single, high-performing department. As a result, the department is missing several key governance features necessary to ensure its success.** The Department of Public Defense (DPD) lacks a comprehensive strategic plan, which leaves the department with little to support essential management structures. DPD also did not adequately plan for the creation of a department with a unified strategy, failing to articulate a clear vision of the organization’s desired final state or to establish the elements necessary for an effective transition. This further undermines DPD’s ability to improve service quality.

## King County’s public defense structure changed in 2013

**The County created the Department of Public Defense in 2013 by consolidating four nonprofit law firms into one department, but the firms are still essentially operating as independent entities.** Before 2013, King County provided public defense services through contracts with four nonprofit legal firms. After a lawsuit and a voter-approved change to the County Charter, the firms were brought into the County as part of the new Department of Public Defense (see Exhibit A). Despite their incorporation into DPD in 2013, five years later, in 2018, the four former nonprofits still act as distinct, independent divisions. The DPD Director’s Office assigns cases to each of the divisions<sup>1</sup>, and sets the department’s strategic direction, with each division directly responsible for representing clients in their individual proceedings. DPD’s current structure was adopted as part of an interim plan to bring the department into the County. While county stakeholders have discussed the possibilities and challenges of alternative structures, DPD has not significantly restructured since this initial decision.

EXHIBIT A: The four current DPD divisions are structured the same as the former nonprofits<sup>2</sup>



Source: King County Auditor’s Office

<sup>1</sup> Not all divisions represent clients for all case types, so cases are assigned relative to the divisions that represent clients for that case type, accounting for vertical representation, conflicts, and capacity.

<sup>2</sup> Under the Office of Public Defense, the four nonprofits were: The Defenders Association (TDA); Associated Counsel for the Accused (ACA); Northwest Defenders Association (NDA, ND); and the Society of Counsel Representing Accused Persons (SCRAP).

DPD has not effectively planned for a high performing organization

**The Department of Public Defense did not adequately plan for the transition from four independent nonprofits into a county agency, fundamentally limiting the department's effective use of county resources and consistency of service.**

Consolidating four nonprofits into a new county department was a large change. To effectively facilitate this level of change, an organization would need to have a clear vision of its future, achieved through strategic planning. Effective strategic plans include organizational goals tied to objectives, strategies, and action plans. Although DPD began developing a strategic plan in 2018, the draft plan is missing core elements of effective management (for example, thorough performance measures, policies and procedures, and a well-defined training program). DPD has few objectives connected to effective advocacy and other major organizational goals. The majority of the strategic planning process focused on the responsibilities of the Director's Office and not the department as a whole. This means the plan largely fails to address the roles and interactions of the four divisions that make up the core of DPD's work. As a result, the draft strategic plan is not set up to improve DPD's effectiveness in using county resources or the consistency of DPD's work. The strategic planning effort is currently on hold, with interim DPD management stating that the new Public Defender should lead further development of the plan.

**There has not been any formal change management strategy at the Department of Public Defense, despite a need to enhance agency functioning.** Once DPD has articulated its desired future in a robust strategic plan, DPD needs to plan how to manage the transition. An effective approach to change management identifies the leadership and employees with the skills needed to support the transition, as well as proper incentives, resources, and planning to actualize the strategic plan. Ultimately, an organization needs to make sure that staff is on board with the shift by effectively engaging with employees who both support and oppose the new approach. DPD's attempt to create a unified department from the four nonprofits is missing these key components of change management. DPD staff consistently emphasized that communication between the Director's Office and the divisions was ineffective, and that it was not engaged in department decisions during the transition. DPD's interim leadership has made a conscious effort to improve communication in recent months, which may help address this challenge in the future. In the absence of a clear strategy for change with buy-in at all levels, DPD will struggle with creating the essential organizational elements, known as "governance," that we will discuss throughout this report.

### Recommendation 1

**The Department of Public Defense should develop and apply a comprehensive strategic plan with goals, objectives, strategies, and activities that address quality and consistency for clients, and the effective use of county resources.**

## Recommendation 2

**The Department of Public Defense should define, document, communicate, and implement a comprehensive strategy to complete the transition of the department's organizational elements into a unified county agency, and explain the steps and resources needed to do so.**

**Implementation of the strategic plan and change management strategy set the direction for every aspect of the Department of Public Defense and for every recommendation that follows in this report.** The following report sections focus on individual aspects of the organization and its governance approaches, but the findings and recommendations reported within the sections are interconnected. To successfully transition into a high-functioning county agency that ensures consistency in its work and the effective use of county resources, DPD should view each recommendation as part of an overarching whole rooted in its strategic plan. See Appendix 1 for a description of how all the governance elements fit together.



# Budget and Staffing

## SECTION SUMMARY

**The Department of Public Defense is an important and costly service; however, the department lacks measures demonstrating that it is providing effective client representation and good stewardship of public funds.** Since DPD's formation as a county department, public defense costs have risen by roughly two-thirds, from \$41 to \$72 million, without a corresponding increase in the number of cases. Increasing wages and benefits to match that of county Prosecuting Attorney's Office (PAO) employees, as well as changes in caseload standards and practices, drove much of DPD's budget growth. Along with equal pay, adopted county policy and Washington State Bar Association (WSBA) standards direct DPD to implement case management measures. However, we found that DPD lacks these measures for its work. In addition, the model DPD uses to estimate future staffing needs and budget requests is unreliable. Without accurate workload measures and quality standards tied to the division's strategic governance efforts, the larger investment in public defense may not lead to better results.

## DPD's costs per case have increased since the formation of the department

**The Department of Public Defense is more expensive now than in 2013; despite increased costs, the department handles roughly the same number of case assignments as it did when it was created.** Prior to the merger, the County used a formula to determine funding for each public defense services contractor. The formula theoretically supported pay rates equal to PAO employees, but in reality, the nonprofits had more staff than accounted for by the funding model. As a result, the cost of public defense has increased significantly since bringing services into the County. Although DPD's total staffing costs, and its average per full-time equivalent (FTE) cost increased since 2013, its overall level of casework remained relatively stable.<sup>3</sup> New costs were largely driven by increases in salaries to reach pay parity with the PAO, as well as other changes in standards such as decreases in some caseloads to meet Washington Supreme Court standards. Because DPD's higher costs did not significantly increase work capacity or work outputs, public defense is more expensive, on a cost per case basis, than at the formation of the department. We estimate that DPD's average cost per case increased from \$2,240 in 2013 to \$4,312 in 2017—an increase of 93 percent.

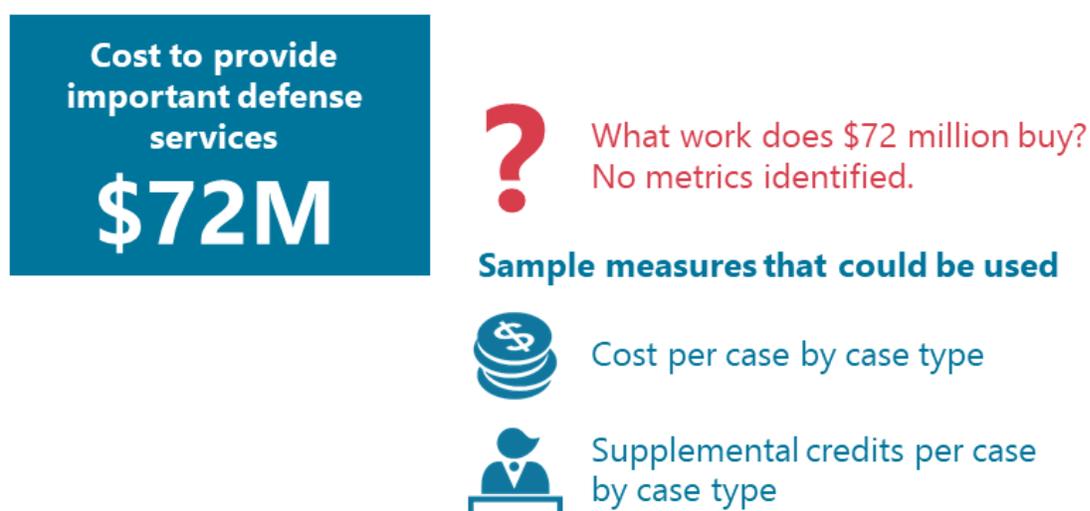
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<sup>3</sup> Auditor's Office staff performed an analysis of DPD case assignments between 2013 and 2017; while the number of assignments fluctuated by individual case type, DPD's overall workload, weighted across all case types did not increase during the period.

## DPD does not have quality and efficiency standards

**The Department of Public Defense does not have documented work standards required by its authorizing ordinance and Washington State Bar Association standards.** Council-adopted policy in DPD's authorizing ordinance requires that DPD have pay parity with the PAO and that it manage its work for quality and efficiency based on adopted standards.<sup>4</sup> In addition, WSBA Standards for Indigent Defense Services require published caseload policies and procedures and publicized criteria for evaluating attorney performance.<sup>5</sup> DPD has effectively worked toward reaching pay parity with the PAO, but we found that DPD does not have the required defined benchmarks for quality or efficiency (see Exhibit B and Exhibit E in the next section). Although DPD measures case-related effort—in terms of time spent—on many case types, it does not have standards for case efficiency.

EXHIBIT B: DPD does not have required measures in place



Source: King County Auditor's Office analysis of King County budget data and North Carolina Systems Evaluation Project measures

<sup>4</sup> KCC 2.60.026 (4): "Ensuring that the American Bar Association Ten Principles for a Public Defense Delivery System, as approved by the American Bar Association House of Delegates in February of 2002, guide the management of the department and development of department standards for legal defense representation..."

ABA Public Defense Delivery System Principle 8: "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system."

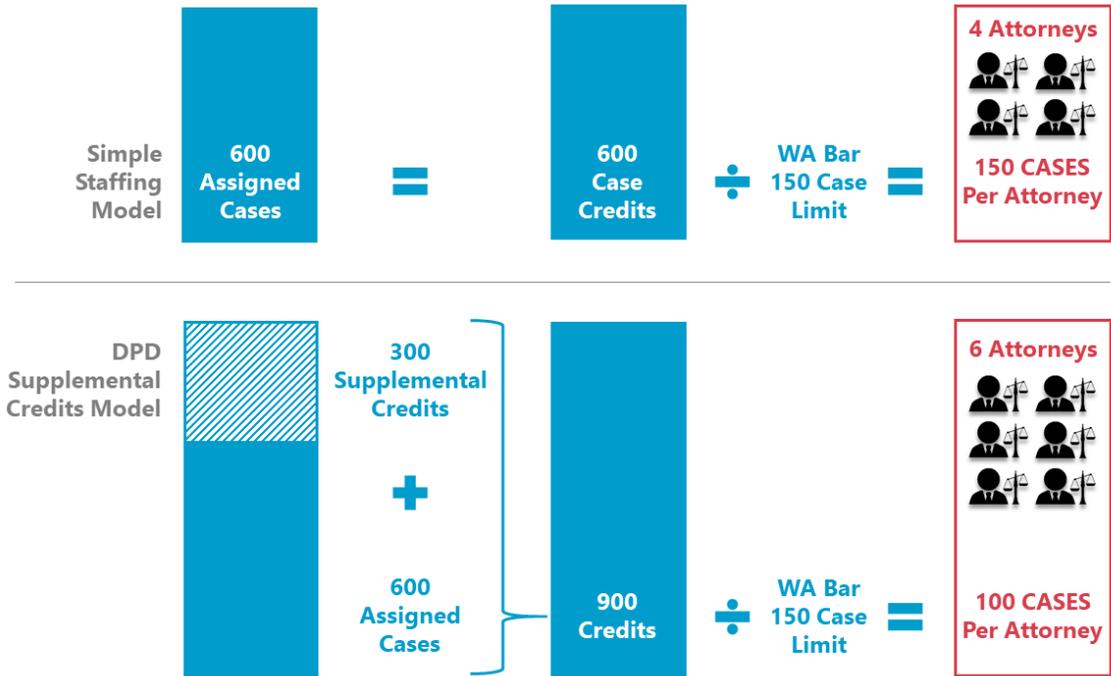
ABA Public Defense Delivery System Principle 10: "Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards."

<sup>5</sup> Washington State Bar Association Standards for Indigent Defense Services, Standard Three: Caseload Limits and Types of Cases, part – "The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish writing policies and procedures to implement a numerical case-weighting system to count cases." Standard Eleven: Monitoring and Evaluation of Attorneys – "The legal representation plan for provision of public defense services should establish a procedure for systematic monitoring and evaluation of attorney performance based upon publicized criteria."

DPD has weak standards on effective use of case time

Without standards on effective case management (such as standards on the use of supplemental credits), attorneys may spend widely varying amounts of time on cases. The amount of time attorneys spend on cases directly affects their workload, but DPD has not set standards or guidance on the appropriate use of case time. DPD manages work through both case assignments and supplemental credits.<sup>6</sup> Unit managers award supplemental credits for specific attorney activities and extra time spent on a case, proportionally reducing the number of new cases that can be assigned to the attorney (see Exhibit C).

EXHIBIT C: Supplemental case credits impact attorney caseloads



Source: King County Auditor’s Office

**Because supplemental credits can reduce caseload, depending on the type of case, Department of Public Defense attorneys have workloads that are lower than the case maximums set by the Washington State Bar Association.** For example, a felony unit defender earns a supplemental credit after 13.3 hours of work on a specific case above the initial 12.1 hours spent, which in turn reduces the attorney’s availability for a new case assignment. DPD managers reported different criteria and processes for evaluating and awarding supplemental credits; some review staff time records relative to work on individual cases, while others use an automated process based on the individual attorney’s time records. DPD leadership is currently in the process of updating its case credit policies to provide expectations on supplemental credit use.

<sup>6</sup> Supplemental credits are used most commonly in felony practice.

### Recommendation 3

**The Department of Public Defense should formally adopt and publish case management standards that include expected ranges and limits for supplemental credits for individual attorneys, units, and across case types.**

DPD's staffing model risks continuing inefficient practices

**The Department of Public Defense's staffing model may not accurately determine staffing needs. This means that although the department is making staffing requests, it may not know how many staff it needs to meet its workload.** DPD's staffing model was developed in partnership with the Department of Performance, Strategy, and Budget, and is intended to determine DPD's staffing needs. The model calculates the number of staff needed based on attorney caseloads. Support staff, such as investigators and legal assistants, are added at a ratio based on the number of attorneys; a difference of one attorney results in a difference between 1.85 and 2.25 additional FTE, depending on the case type. Because DPD's staffing model treats case assignments and supplemental credits equally in calculating the number of attorneys (and support staff) needed, it presumes that staff work is at optimal efficiency. As a result, the model's predictive value is limited. As attorneys spend more time on cases, earning more supplemental credits, the staffing model indicates that DPD needs more attorneys. If attorneys spend or record less time, the needed number of attorneys is fewer. In addition, the model may intensify errors because of the support staffing ratio. These errors could result in more or fewer DPD staff than necessary to meet the actual workload.

**The staffing model may not accurately address case management trends.** The complexity of the staffing model may hide emerging issues in staffing. For example, the number of supplemental credits per case assignment in the felony practice area has decreased over the past three years, meaning that on average, individual DPD felony attorneys have managed more cases (and received fewer supplemental credits) during this time. Based on the trend, DPD did not ask for more felony staff in the 2019-2020 budget. However, without a defined case management standard, nothing limits spending more time on cases and reversing the trend. This could occur due to an increase in complex cases, or simply because more time is being spent on similar cases. As more time is being spent on cases, more supplemental credits will be awarded. In this case, the staffing model would suggest that DPD should hire additional staff or assign more cases to outside counsel at additional cost to the County. As a result, the model is highly sensitive to the time entered into recording systems, further limiting its predictive value.

### Recommendation 4

**The Department of Public Defense should adjust the staffing model to include its formally adopted case management standards and to align with departmental goals and objectives.**

Poor data entry exacerbates staffing model issues

**The case time data that drives workload management and the staffing model is unreliable, creating estimation errors.** When estimating attorney workload using time records, the accuracy of the estimate depends on the accuracy of the records. However, the quality of case time records are inconsistent across DPD's divisions. Attorneys and staff enter different amounts of time and receive varying amounts of supplemental credit than others in the same area of practice. These differences may reflect variations in work, but they may also reveal problems in the consistency of data entry across units and divisions. In turn, because supplemental credits are based on unreliable case time data, the resulting staffing model estimates may be similarly unreliable. Unfortunately, the Director's Office does not have full access to division case time data, making it difficult to identify the specific causes of inaccuracies<sup>7</sup>. As a result, management cannot directly address problems it sees in aggregate case time data, or the resulting errors in staffing needs estimates. We discuss data limitations further in the next section.

### Recommendation 5

**The department should develop a plan to improve the accuracy and consistency of data entry across the divisions for data that informs the staffing model and mitigate reliance on poor quality data in managing department work.**

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<sup>7</sup> By reviewing the completeness of specific hours entries, DPD could identify cases or workgroups with inconsistent or incomplete hour entries.



# Case Management and Outcomes

## SECTION SUMMARY

**Significantly different case approaches and outcomes across the Department of Public Defense’s divisions result in uneven representation for clients in similar situations.** Case management varies by division; for example, some units go to trial more often than others and achieve better trial outcomes for clients. There are several reasons for this, including that DPD does not have comprehensive policies or standards to promote consistency in case management and does not have a documented training and onboarding plan to respond to gaps between standards and performance. In addition, DPD does not evaluate attorney performance against clear criteria at either the supervisor, division, or Director’s Office level. Lastly, efforts to evaluate the department for continuous improvement efforts are hindered by the director’s limited access to data. These reasons all stem from the lack of a unified strategic plan for the department.

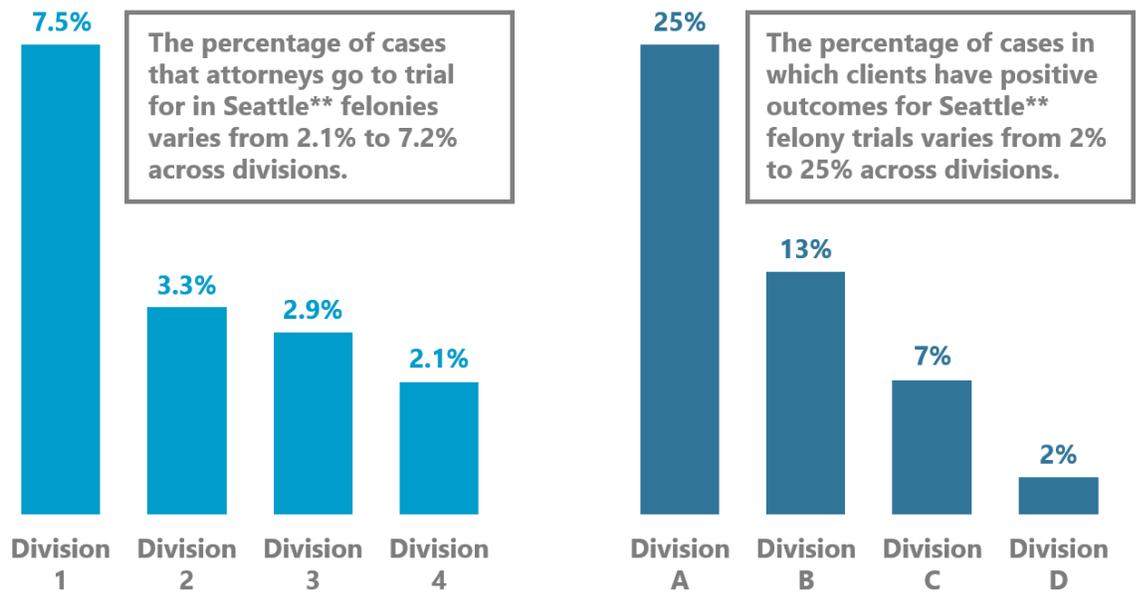
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## Varying case strategies lead to unequal case outcomes

**Department of Public Defense divisions have different approaches to case management, resulting in inconsistent outcomes and potential inequities for clients.** While not all divisions represent clients in all case types, most of the largest case types are served by all divisions. Although some differences in practice may be justified based on legal discretion and the uniqueness of each individual case, and individual case circumstances can vary significantly, clients overall should receive equitable outcomes regardless of which division serves them. However, we found that clients served by different divisions have different case outcomes.

For example, between 2015 and 2017, trial rates and trial results differed significantly among felony units. One division went to trial 2.1 percent of the time and another division 7.5 percent of the time in the same court (see Exhibit D). Trial outcomes also varied significantly across divisions. For Seattle felony cases that went to trial, one division obtained positive outcomes (e.g., a not guilty verdict or guilty to a lesser included charge) for its clients 25 percent of the time and another division two percent (see Exhibit E). In addition to these, DPD staff acknowledges other differences in case management approaches, such as time spent on cases, but DPD data on case time is not reliable.

EXHIBIT D: Felony case practices and outcomes vary across divisions \*



Source: King County Auditor’s Office graphic developed based on evaluation of DPD case management data from 2015 to 2017

\*Divisions are presented in descending order in each graph, with the first division being the division with the highest percentage. This means that division’s location in the two graphs are not necessarily the same.

\*\*Seattle refers to felony matters in King County Superior Court’s Seattle case assignment area.

**Inconsistency is driven by several factors**

**The Department of Public Defense’s approach to case management results in different case outcomes, creating potential inequities for department clients.** The difference in case approaches across the divisions occurs for five reasons:

- A. Missing guidance
- B. An underdeveloped training program
- C. Lack of performance measurement
- D. Limited data access
- E. Inconsistent case time data

**A. Missing guidance:****The Department of Public Defense does not have adequate policies and procedures to support reliably effective case management across the divisions.**

DPD has written policies and procedures in response to emerging concerns or perceived risks, but does not have comprehensive policies to manage its work. As of September 2018, DPD did not have complete job descriptions for all major roles, practice manuals for different case types, or a universal policy and procedures manual or employee handbook. In the absence of clear departmental direction, individual divisions and workgroups manage cases based on their personal styles, maintaining differences in practice and potential outcomes for clients. This is reflected in supervisors' varying approaches to attorney management and assessment across divisions. For example, some supervisors report actively reviewing time entries to identify when attorneys are struggling with cases, while others only review hours broadly for large discrepancies and to ensure that hours are being entered accurately. Supervisors also report differences in how they award supplemental case credits, as discussed earlier. Since supplemental case credits influence an attorney's workload, any difference in how credits are awarded directly impacts the time and effort an attorney is able to spend on any given case. This may result in different workloads across units. Inconsistent employee standards also create the risk of claims against the County, as employees may sue over perceived inequities in promotions, discipline, or general expectations. As of September 2018, the DPD leadership team has begun implementing standardized supervision tools and developing guidelines for supplemental credit use, representing a positive step toward consistency for the department.

**Recommendation 6**

**The Department of Public Defense should develop and institute a comprehensive set of policies and procedures outlining employee expectations. This guidance should align with department goals and objectives.**

**B. An underdeveloped training program:**

**The Department of Public Defense’s training and onboarding program fails to fill in the gaps between department standards and actual performance, impeding consistency and continuous improvement efforts.** The Director’s Office has a central training unit for the department, but largely plans trainings in an impromptu manner. It does not have a documented training program or a process to find and fix inconsistencies through training. Instead, trainings are determined based on conversations with staff, court observations, and other informal approaches. DPD also lacks comprehensive employee onboarding to set clear performance expectations for new staff. In addition to concerns about training content, staff reported difficulties attending trainings because of scheduling conflicts and a lack of adequate notice from the training unit<sup>8</sup>.

Although flexible case management can provide individual chances for skill building, a training plan designed around defined standards, key career milestones, and departmental goals is key to advancing employee competence. High quality training programs feature a comprehensive series of trainings linked to defined outcomes and performance measures. They have a sequence and schedule of specific training topics determined in advance and broadly communicated to staff across the organization.

**Recommendation 7**

**The Department of Public Defense should develop and document a training program, broadly communicate it to staff, and link it to performance measures. This program should align with department goals and objectives.**

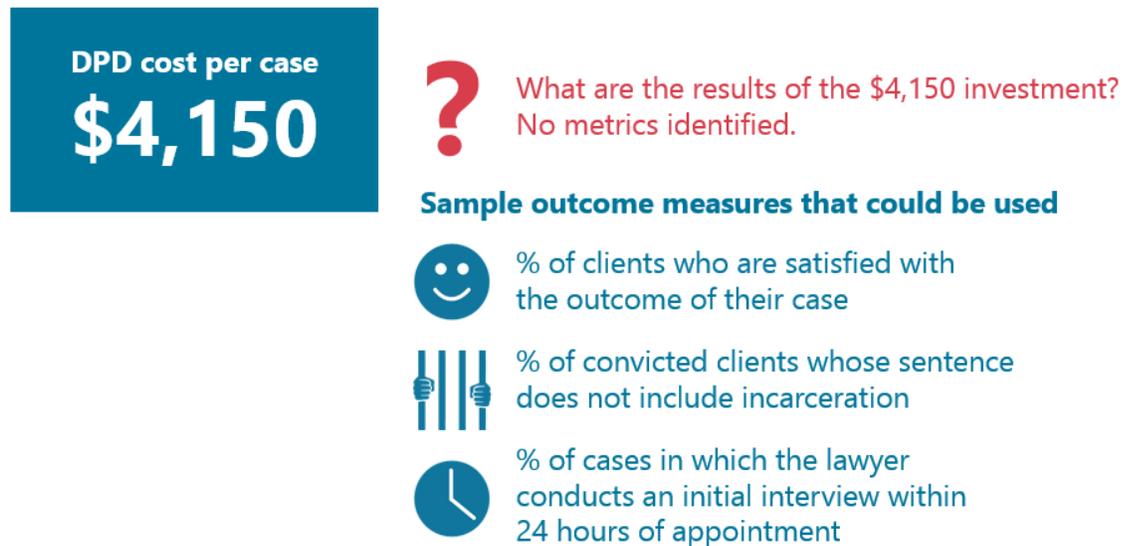
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<sup>8</sup> DPD management recognizes this issue and intends to begin addressing it through annual trainings and more specific training across job classifications.

**C. Lack of performance measurement:**

**The Department of Public Defense does not assess department or employee performance against objective measures, so it cannot determine whether it is meeting department goals or identify how to better achieve its objectives.** DPD has started work on a strategic plan, but the current draft does not address DPD’s lack of comprehensive performance measures (see Exhibit E). The majority of the draft’s goals and measures are unrelated to case practices or outcomes. As mentioned previously, DPD’s authorizing ordinance requires that DPD manage its work for quality and efficiency according to defined standards. However, DPD has not developed the objectives and goals necessary to create these standards, and does not currently have standards in place. The lack of standards is reflected at the unit level as well. Supervisors we interviewed reported they monitor performance in a variety of ways, from individual meetings with attorneys to reviews of time activity entries. They did not have a standardized method for measuring performance, however, despite state bar requirements that attorney performance should be systematically monitored and evaluated based on publicized criteria.

EXHIBIT E: DPD does not have required measures in place



Source: King County Auditor’s Office analysis of King County budget data. Sample measures from the National Legal Aid and Defender Association’s *National Indicators of Quality Indigent Defense and the International Legal Foundation’s Practice Principles and Key Activities, Measures, and Outcomes*.

At a departmental level, regular performance measurement could help DPD understand whether it is meeting departmental goals. The Director's Office could use these measures to compare divisions' performance and address any discrepancies as well. At the division and unit levels, standardized performance measurement would make personnel decisions fairer and would make sure that attorneys are effectively representing their clients. The public defense field has historically suffered from a lack of agreed-upon objective standards for quality indigent defense, but standards are beginning to emerge and some forward-thinking agencies have developed and used measures for performance. By working to incorporate these into its practices, DPD can serve as a model for other agencies while meeting standards and ensuring the quality of its work.

## Recommendation 8

**The Department of Public Defense should implement objective performance measures and use these measures to regularly assess employees and the department as a whole relative to department goals and objectives.**

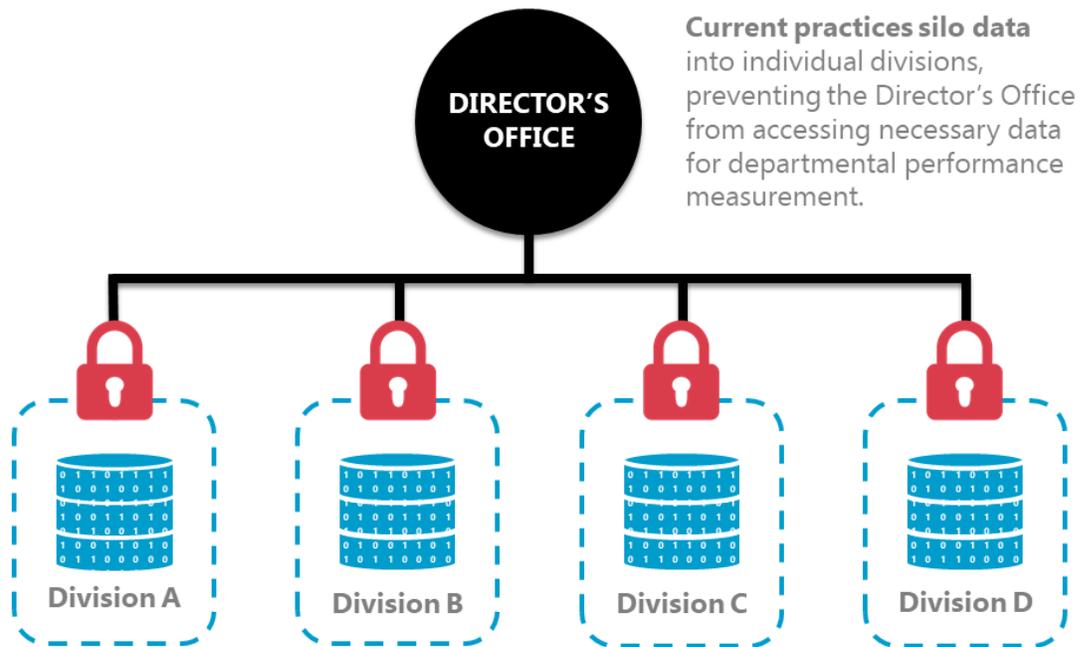
### D. Limited data access:

**The Department of Public Defense's strict interpretation of its ethical walls policy keeps the department from using data for continuous improvement efforts.** The ethical walls policy provides a framework for the Director's Office and the divisions to prevent conflicts of interest<sup>9</sup>. A conflict of interest can occur if an attorney has access to information on a former or current DPD client that could be used to help a different client at the other client's expense. To prevent this from occurring, DPD's ethical walls policy prevents divisions and the Director's Office from seeing case information that could be used against a current DPD client.

The policy requires that each division maintain its own secure database of case information, blocking access to outside parties, including the other divisions and the Director's Office (see Exhibit F). While the policy states that the Director's Office may access aggregated and non-confidential client case-related data, it does not specify what information this includes or how it can access it. DPD leadership acknowledges that its current practices are more restrictive than the ethical walls policy requires, and that the Director's Office should be authorized to access aggregate data from the divisions.

<sup>9</sup> A conflict of interest exists if there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person.

## EXHIBIT F: Information siloes inhibit data-based decisions by the Director's Office



Source: King County Auditor's Office graphic developed based on discussions with DPD staff

Without clear data access processes, the Director's Office depends on the willingness and ability of the divisions to share information. The Director's Office must negotiate data requests with each of the divisions separately and on a case-by-case basis. This process is cumbersome and only allows the Director's Office to access data in individual batches (instead of updating in real time), preventing the Director's Office from effectively using data on department or division performance that is fundamental to departmental governance. To the extent that the divisions are unable or unwilling to share information, there is no defined recourse process.

### Recommendation 9

**The Department of Public Defense should implement a clear, efficient process for information sharing including revising the ethical walls policy to specify data that is allowed to be shared with the Director's Office. The data to be included should align with department goals and performance measures.**

**The Department of Public Defense’s current case management system prevents the Director’s Office from regularly using data for continuous improvement efforts.** The main barrier to sharing information with the Director’s Office is technological—the current system does not allow the Director’s Office to review aggregate division information while maintaining client anonymity. In order for the Director’s Office to see case-level information, DPD often must wait for King County Information Technology (KCIT) to anonymize the data from each of the divisions. This interferes with other services KCIT does for DPD, as time spent on this work takes away from time spent on other projects.

DPD and KCIT developed a request for information for a new enterprise case management system last August 2017. From that effort, DPD is now working with KCIT to develop a request for proposals for a new case management system. It is important not to memorialize ineffective processes in a new case management system.

## Recommendation 10

**The Department of Public Defense should work with King County Information Technology to make sure that the new case management system it procures allows for the Director’s Office to access and review aggregated division performance data in real time. The system should be able to access data that aligns with department goals and objectives.**

### E. Inconsistent case time data:

**Unreliable case management data prevents the Department of Public Defense from using some metrics for departmental evaluation.** Some metrics, such as time spent on cases and time to case closure, could inform management about effective indicators of case approaches and effort at the attorney level. Currently, DPD staff report that employees have different understandings of some data fields and expectations, creating inconsistent data entry. So, data entered by staff into DPD’s case management system is unreliable for these and many other potential metrics.

While DPD reports that time entry data is improving, it also states that the data is compromised by the fact that staff often enter data long after a task is complete. While it may be infeasible for staff to enter time data immediately after every task, the longer staff waits to enter this data, the less accurate it is likely to be. Staff reports that the current case management system does not allow time entry when unconnected from the internet, as is often the case when time is available (such as while waiting for a client at the jail). This, in turn, results in less accurate data and inefficient use of employee time. There are opportunities to resolve these problems with a new case management system.

### Recommendation 11

**The Department of Public Defense should develop and implement a plan to improve the accuracy and consistency of data entry across the divisions. Data that is part of this improvement plan should, at a minimum, include data relevant to selected performance measures.**

### Recommendation 12

**The Department of Public Defense should work with King County Information Technology to make sure that the new case management system it procures addresses data reliability issues for data relevant to implemented performance measures and allows for more consistent time entry.**



# Organizational Structure

## SECTION SUMMARY

**The Department of Public Defense’s departmental structure is a barrier to efficient and consistent representation.** DPD’s departmental structure is different from most public defense agencies. DPD’s stated purpose for this structure is to keep as many cases from being sent to outside attorneys as possible to support consistent and effective client representation. However, DPD’s current structure, with cases assigned to four divisions in roughly equal numbers (for most case types that multiple divisions take), is not ideal for this purpose. Instead, a department with a primary division and several smaller ones would allow DPD to keep more cases in-house than it does now, in addition to supporting departmental consistency, alleviating information barriers, and reducing workload challenges. A change in structure was discussed early in the department’s creation. Without a clear direction guided by strategic governance efforts however, no subsequent changes were made to it. To be most effective, a transition would need to take place gradually, over multiple waves of hiring and natural attrition, and would need to consider logistical challenges and departmental goals.

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## DPD has a unique structure

**The department’s structure is different from other public defense agencies, and has not changed much since its formation in 2013.** DPD has four divisions that manage cases, with cases assigned to divisions in nearly equal numbers for most case types that multiple divisions take.<sup>10</sup> DPD does not prioritize one division for case assignments over any other. While this arrangement was implemented as an interim step to avoid disrupting public defense services, logistical challenges and a lack of data available at the time prevented subsequent changes in structure.

DPD’s four-division structure is different from other public defense agencies. Many agencies have only one division, or assign all cases to outside counsel. When a public defense office has multiple divisions, there is typically a primary division that takes the majority of cases, and one or two smaller divisions that take cases that have a conflict of interest with the primary division.

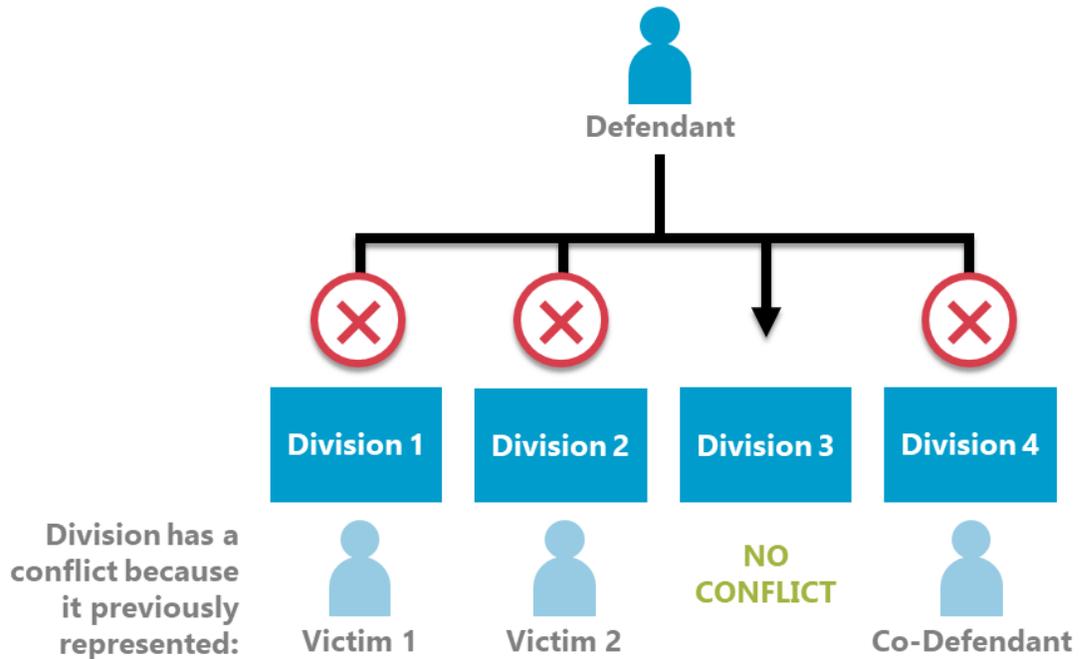
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<sup>10</sup> The exception being that not every division serves every court location or case type.

DPD's structure is intended to keep cases within DPD

The stated purpose of the Department of Public Defense's unique structure is to avoid sending cases to outside attorneys due to conflicts of interest<sup>11</sup>. DPD must send cases to outside counsel if all of DPD's divisions are at capacity or have a conflict with the client. Conflicts are usually based on whether a person involved in the case has previously, or is currently, being represented by one of DPD's divisions (see Exhibit G). A conflict can occur for a variety of other reasons outside of the department's control, such as interpersonal challenges between a client and an attorney, but these are less common. DPD has a stated goal of keeping as many cases within the department as possible<sup>12</sup>, and claims the department's unique structure reduces the number of cases that go to outside counsel due to conflicts. In 2017, DPD sent approximately 800, or five percent, of cases to outside counsel due to conflicts.

EXHIBIT G: Conflicts most commonly occur when clients related to the same case have been represented by a division, or when a case has multiple co-defendants



Source: King County Auditor's Office graphic developed based on discussions with DPD staff

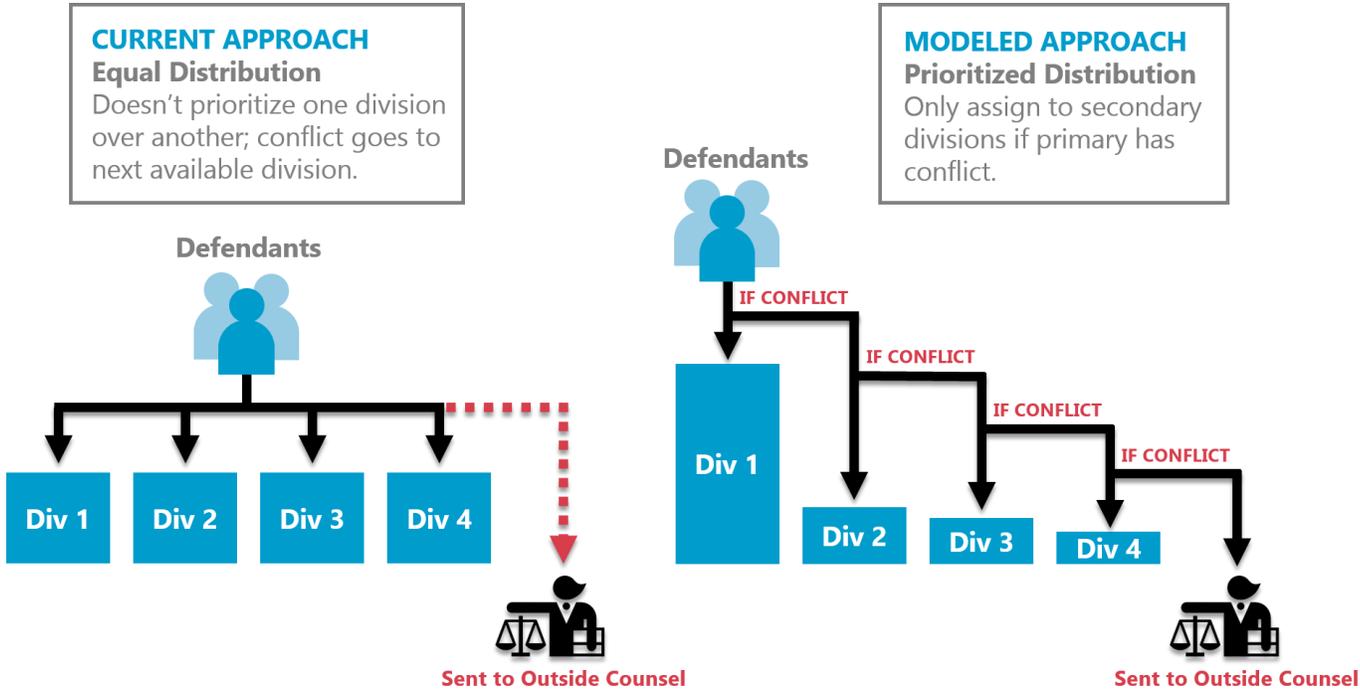
<sup>11</sup> A conflict of interest exists if there is a substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person.

<sup>12</sup> DPD states that it also does this to ensure that the use of unionized labor is maximized.

A primary division structure could keep more cases in-house

The Department of Public Defense’s structure results in more cases being sent to outside counsel due to conflicts of interest than a primary division-based structure would, undermining the department’s intention to keep as many cases within the department as possible. We used DPD data to model a primary division structure for DPD and found that DPD could reduce the percentage of cases sent to outside counsel by prioritizing one larger division for case assignments (see Exhibit H). If optimally structured, by prioritizing one larger division for case assignments DPD could reduce the total percentage of cases sent to outside counsel by a total of up to 2.3 percent (reduced from about five percent) and could send roughly the same number of cases to outside counsel as it is now while reducing the number of divisions to three.

EXHIBIT H: A structure that prioritizes one division for case assignments would allow DPD to send fewer cases to outside counsel



Source: King County Auditor’s Office graphic developed based on model developed by the office

A different departmental structure provides other benefits

**In addition to reducing the need to send clients to non-department attorneys, a primary-division structure with fewer divisions could provide several other benefits. These include:**

- A. Supporting consistent departmental case management by having one division manage the majority of cases.** Consistent case processes are difficult to achieve in the current divisional structure. All divisions only take a minority of cases, so even if one division is fully consistent it would only represent a relatively small percentage of total work. While an alternative structure would not inherently create consistency, a structure with one larger division that takes the majority of cases would make it easier to ensure consistency for most cases.
- B. Reducing workload challenges within individual work units by pooling more specialized attorneys in a single division.** Individual attorneys must be qualified to take on certain case types, and not all attorneys within a division have this qualification. For example, DPD supervisors noted that a unit may have 10 attorneys, but only a few qualified to represent Class A (serious) felonies. If those attorneys are at capacity with other cases, this makes managing workload within the unit more difficult. In these instances the work unit must either move cases between attorneys, absorb the extra workload, or send the cases back to the Director's Office. If most attorneys were in a larger division, there would be greater likelihood that a qualified attorney would be available for any given case, reducing unnecessary case management challenges.
- C. Keeping most case data within one division, alleviating issues caused by information barriers.** As discussed previously, to ensure attorney-client confidentiality, DPD set up its IT system so that information about individual cases is not easily shared outside the representing division. This means that it is difficult and time consuming for the Director's Office to access information to support consistency and quality. In other public defense agencies, the primary division is able to access case management information for the majority of cases without creating a conflict, because most of the department's cases are kept in that division. This would allow DPD to better understand its performance strengths and weaknesses, and then take actions to support the quality of its work.

Changes to departmental structure must be strategic

**Logistical challenges prevent an immediate change in departmental structures, so any change would require planning and time.** DPD cannot move employees easily between divisions, as each attorney's past caseload can create future conflicts of interest, even if they were in a different division. The structures that would keep the most cases from going to outside counsel also may not be viable for logistical reasons, such as a minimum viable division size. By considering the goals of the department however, DPD can work to develop an ideal structure for this purpose.

Changing the departmental structure would require proactive planning. DPD could gradually change division size and caseload by assigning new staff to specific divisions and changing how divisions are prioritized for case assignment. By strategically planning for this change, DPD could gradually keep more cases within the department where it can better ensure it is providing effective representation. It can also ensure that the structure serves departmental goals rather than historical conditions.

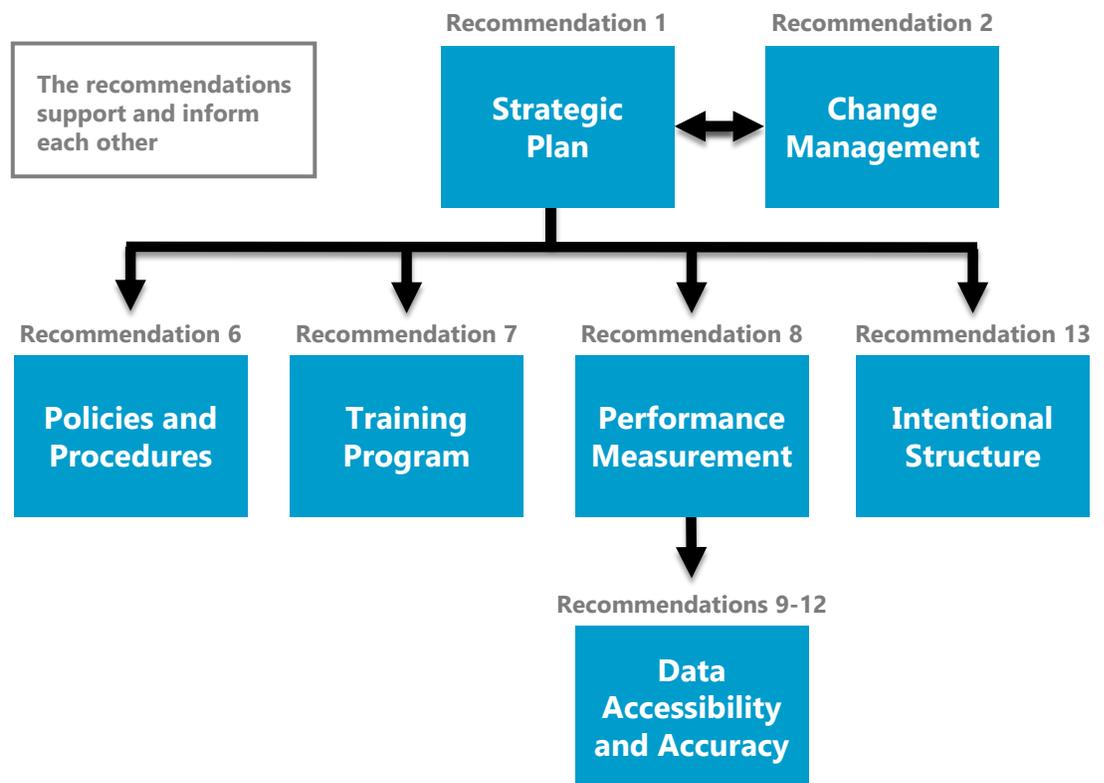
### Recommendation 13

**The Department of Public Defense should design an efficient organizational structure that aligns with departmental goals and implement a plan outlining the transition to the new structure.**

# Appendix 1

**As demonstrated in Exhibit 1, our recommendations throughout this report build on the role of management in guiding the department forward.** A comprehensive strategic plan and strong change management would lay the groundwork for developing policies and procedures, a robust training program, and a performance measurement system. By aligning these elements with the strategic plan, DPD would begin work toward the key departmental objectives and goals. After identifying performance measures, DPD would then be able to develop a system for data entry and accessibility that meets the department’s needs and goals. A strong strategic plan would also provide the framework to determine the optimal departmental structure to meet DPD’s priorities and goals. These steps would improve the consistency and quality of client representation across the divisions and allow for wider evaluation of DPD performance and efficiency as a whole.

EXHIBIT 1: The recommendations of this report are intrinsically connected\*



Source: King County Auditor’s Office graphic developed based on discussions with DPD staff

\*While the strategic plan may play a role in recommendations 3-5, they are not represented in this graphic given that their primary focus is fiscal accountability, rather than connectedness with organizational goals.

# Agency Response

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 **King County**  
**Department of**  
**PUBLIC DEFENSE**  
*Upholding the Constitution,  
one client at a time.*

**Anita Khandelwal**  
**Director of Public Defense**  
710 Second Avenue, Suite 200  
Seattle, WA 98104  
**(206) 296-7662** Fax (206) 296-0587  
TTY Relay 711

**KING COUNTY AUDITOR**  
**OCTOBER 11, 2018**  
**RECEIVED**

October 11, 2018

TO: Justin Anderson, Principal Management Auditor, King County Council

FM:  Anita Khandelwal, Director, Department of Public Defense

RE: Department of Public Defense Response to Audit Report

We appreciate the effort the auditor devoted to the Department of Public Defense (DPD), and some of the insights the audit provides. For example, the absence of a completed strategic plan means, as the auditor points out, that DPD lacks clarity in identifying its goals and lacks indicators to demonstrate whether it is achieving its goals. Rectifying this baseline problem is amongst DPD's highest priorities; we are committed to:

1. completing the strategic planning process in collaboration with our staff and unions, and to developing consensus within the department regarding appropriate indicators of high-quality public defense;
2. building a training program that equips our staff with the skills needed to provide high-quality representation to all clients; and
3. working with King County Information Technology (KCIT) to acquire a case management system that allows staff to more easily enter data and allows management, on both the division and departmental level, to quickly obtain aggregate data.

To promote consistently high-quality representation, we have already:

- updated and completed several practice area guides so that our attorneys and their supervisors may have a standardized set of best practice guides to turn to;
- set up training sessions with the Managing Attorneys of the four divisions regarding how to best use the current case management system, Legal Files, and, in the spirit of teaching the teachers, to pass these skills on to unit supervisors so that our data is consistent; we have done this even before the implementation of an updated, efficient file tracking system which we hope will become increasingly consistent both within and across divisions, allowing for more effective comparisons than, as the auditors note, have previously been possible;
- focused Managing Attorneys on operations within their division and managing their division's attorney workload; the model of divisional representation embraced by DPD requires that each division be operated by a Managing Attorney with the type of deep and broad understanding of his or her division that can be attained by daily immersion in the inner-workings of the division; and

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- reviewed caseload numbers with Managing Attorneys on a weekly basis to ensure that workloads for each attorney are (relatively) manageable and consistent from month to month and to ensure that all Managing Attorneys are looking at caseload numbers in the same way.

Notwithstanding our commitment to using the audit to remedy issues internal to DPD, we believe that some of the auditor's recommendations reflect unfamiliarity with public defense. Indeed, the auditor does not identify any public defense entities as comparators. We respectfully request the reader consider the following context when reading the auditor's report:

**1. The Quality of Public Defense is High**

The Public Defense Advisory Board's (PDAB) most recent report states "[t]he quality of service to indigent clients is high." PDAB based its assessment on interviews with the presiding judges of the Superior, District and Seattle Municipal Courts; the King County Prosecuting Attorney; the Chief of the Criminal Division of the Seattle City Attorney's Office; the King County Executive; and the Chair of the County Council's Law & Justice Committee. The qualitative information gathered by the Board should not be disregarded.

**2. The increased cost of public defense is due entirely to County salaries, benefits, intra-governmental service costs, and adherence to standards.**

The auditor suggests King County should be getting additional value from public defense because it is paying more per case. The auditor is correct that the cost of public defense in King County has increased since the County internalized the public defense function. This is because public defenders had not previously achieved parity with prosecutors in salary and benefits. As the Court noted in the *Dolan* opinion:

It appears that while the county made an effort toward parity, the defender organizations never felt parity was achieved. According to the defender organizations, the county failed to provide funding for senior defender positions and therefore the organizations had to classify defenders in lower classifications than prosecutors with similar experience. The county also took the position that parity only applied to base pay and not benefits. The county did provide funding for mandatory employer taxes such as the Federal Insurance Contribution Act tax and unemployment insurance.

The fact that public defense staff have now come closer to parity with the prosecutor does not require them to provide additional value.

**3. The auditor critiques DPD for "weak standards on the use of case time" and for a lack of objective performance measures without adequately acknowledging that few, if any, public defense providers in the nation have these standards.**

Much of the auditor's report focuses on the lack of consistency in DPD practice. The auditor writes that this is driven by "weak standards on the use of case time" and a lack of objective performance measures. First, consistency for its own sake should not be a goal. Consistently high-quality representation is a worthwhile goal.

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Our attempt to push for a more consistently high-quality practice must also conform with the Rules of Professional Conduct (RPC). RPC 5.4(c) expressly forbids the creation of any such rubric, stating “a lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”

In addition to potentially violating RPC 5.4(c) and analyzing unreliable data, the type of standardization applicable to some industries are inconsistent with best practices in public defense. For example, a client with mental illness will require much more time to understand a plea agreement than a client who is not suffering from that illness. It is inconsistent with the Sixth Amendment to specify amounts of time for specific tasks, given the complex lives and goals of our clients and the complexity of the criminal legal system.

Nonetheless, DPD firmly believes that it is possible to create flexible performance measures based on best practices that can be deployed by well-trained supervisors allowing individual assessments of a particular attorney’s work that will yield results of a sufficiently consistent nature to permit comparison between attorneys’ work within and across divisions. Currently, the National Legal Aid and Defender Association recognizes that there is not such a “nationally accepted mechanism” for measuring the quality of public defense; DPD looks forward to becoming a national leader in this area.

**4. While having more consistent supplemental credit use is important, these credits are used by only approximately 60 of DPD’s 200 lawyers.**

The auditor is rightly concerned about inconsistent use of supplemental credits, and interim management has been working to address this issue. Supplemental credits are necessary to manage workload and provide effective assistance of counsel to each client, regardless of how complicated the case may be. For instance, a complex fraud or murder case simply takes more time than a low-level offense, and supplemental credits allow management to adjust to those realities. But it is important to define the scope of this issue. Supplemental credits are a relatively small part of our actual budget and are rarely used in any practice area other than felonies. DPD has approximately 200 lawyers, only 63 of whom practice in felonies. The use of supplemental credits may increase as the complexity of cases increases, and consistent use and guidance are important.

**5. DPD joins the auditor’s proposals regarding data collection, but we must recognize that there will be significant transaction costs.**

The auditor proposes that DPD gather higher quality data from attorneys and staff in order to assess performance. But, as noted above, this easily stated goal becomes deeply complicated by the rules of legal practice. Under RPC 1.6(a), “a lawyer shall not reveal information relating to the representation of a client” except under exceedingly rare circumstances. Perhaps the broadest and strictest confidentiality rule in the nation, RPC 1.6 renders the mechanisms and content of information sharing between divisions, whether through the Director’s Office or otherwise, intensely complex.

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Nonetheless, DPD recognizes that the ability to timely acquire and compare aggregate data is essential to ensuring consistent, high-quality defense. Further, DPD recognizes that our current aggregate data (which the auditor relies on) is largely meaningless because it was created without articulable, enforced guidelines or sufficient training.

In order to obtain better data, DPD will first need to acquire a user-friendly and sophisticated case management system. The department currently uses two separate systems, a case management system and a case assignment system. Neither of these systems meets the business needs of the department. The case assignment system relies on an archaic programming language and the other is overly complex. Both require specialized skills to create reports and templates. This complexity makes developing new reports extraordinarily expensive. Once acquired, staff will need to be trained to effectively use the new system and managers will need to be trained on how to supervise the entry of information.

The department received funding authority for the first phase to procure a modern Case Management System (CMS) including planning and vendor selection. The department made an additional capital project request in the 2019-2020 budget proposals that will implement the new system. A new CMS can improve the quality of our data by transforming and standardizing our data, making it easier to identify issues and outliers, and speed up the time it takes to take appropriate management actions. While in the end the benefits will outweigh the costs, it is important to note that data collection and analysis is costly and will take time.

**6. The auditor's proposals regarding re-structuring DPD do not adequately consider DPD operations.**

The auditor suggests restructuring DPD and possibly eliminating one division, in part to reduce the number of cases that go to assigned counsel (from the current number of 5% down to 2.5%). As discussed below, this option has been previously explored and rejected, but of additional immediate import, the conflict model used by the auditor applies inaccurate criteria, overestimating conflicts in some regards and under-detecting them in others. The auditor bases their historical conflict model on three identities: "codefendant, other suspect, or victim." By failing to incorporate the much more complicated analysis of when a witness's relationship with a division creates a conflict, the model fails to produce usable data. The auditor further posits that, "if the victim of the crime was previously represented by the TDA division, the defendant cannot be represented by that division..." Although this is sometimes true, it is, more broadly, neither an accurate statement of the rule nor of DPD's policy.

Setting aside the potentially bad data created by the auditor's model, the Office of Performance, Strategy and Budget (PSB) explored the option of restructuring at great length when the County brought public defense in house. PSB concluded that at most, this would lead to a 2 FTE reduction in employees. It would also negatively impact morale. The auditor's other justification for structural change – greater consistency – is not grounded in DPD's experience. The lack of consistency at DPD, both within and among divisions, is driven by DPD management's failure to articulate consistent standards. This is an issue DPD is committed to remedying through development of standards in collaboration with labor partners and staff and through training.

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The auditor notes that a larger division would have an easier time managing absences created by FMLA and having enough Class A felony qualified attorneys. While this is certainly true, it also means that the smaller divisions would be devastated by a single attorney going out on FMLA and would need to have all Class A qualified attorneys (because they could, at any point, receive a high volume of Class A cases due to conflicts). In short, this is a zero sum game. Creating one large, well-functioning division means having two to three smaller divisions that are very hard to operate. The current structure, while not perfect, permits for four functional divisions.

In conclusion, the auditor has flagged many areas of growth and opportunity for DPD. While I believe that some of the auditor’s proposed solutions do not reflect DPD’s operational needs, I do think there are other ways to meaningfully address the gaps the auditor flags. I look forward to continuing to work toward this goal.

AK:kg

**Recommendation 1**

The Department of Public Defense should develop and apply a comprehensive strategic plan with goals, objectives, strategies, and activities that address quality, and consistency for clients, and the effective use of county resources.

**Agency Response**

Concurrence	<b>Concur</b>
Implementation date	December 31, 2019
Responsible agency	DPD
Comment	Until the Department has permanent leadership, it is unwise to complete the strategic planning process. Assuming the Department has permanent leadership by January 1, 2019, this would be the time to begin this body of work, and I would anticipate needing nearly one year to complete it. Please see DPD letter for further information.

**Recommendation 2**

The Department of Public Defense should define, document, communicate, and implement a comprehensive strategy to complete the transition of the department’s organizational elements into a unified county agency, and explain the steps and resources needed to do so.

**Agency Response**

Concurrence	<b>Concur</b>
Implementation date	Present-December 2019
Responsible agency	<b>DPD</b>
Comment	DPD should define the essential elements of the Director's Office that advance our strategic plan and then communicated with all levels of our staff to ensure that any changes are successful. We are committed to engaging with our staff at all levels to ensure successful change management.

**Recommendation 3**

The Department of Public Defense should formally adopt and publish case management standards that include expected ranges and limits for supplemental credits for individual attorneys, units, and across case types.

**Agency Response**

Concurrence	<b>Concur</b>
Implementation date	December 2019
Responsible agency	<b>DPD</b>
Comment	DPD has already adopted presumptive limits on supplemental credits in felony cases. Supplemental credits do not lend themselves to limitations by case type. A class C felony that goes to trial may take much less time than a Class B felony that pleads at arraignment. The auditor suggests cost per case may be an appropriate measure. DPD does not believe it is, and indeed, that imposing an arbitrary cost per case cap could violate RPC 2.1. Please see DPD letter for further information.

**Recommendation 4**

The Department of Public Defense should adjust the staffing model to include its formally adopted case management standards and to align with departmental goals and objectives.

**Agency Response**

Concurrence	<b>Concur</b>
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Implementation date	January through November 2019.
Responsible agency	<b>DPD and PSB</b>
Comment	While DPD does not believe that the staffing model can or should be adjusted based on a hard cap on supplemental credits, we do intend to work with PSB to adjust it with reference to to the Standards for Indigent Defense. DPD workload has changed with the advent of body worn cameras and increasingly complex caseloads, none of which are accounted for in the staffing model. The model also does not account for the work of mitigation specialists and the heavier workload for administrative staff with higher volumes of discovery.

**Recommendation 5**

The department should develop a plan to improve the accuracy and consistency of data entry across the divisions for data that informs the staffing model and mitigate reliance on poor quality data in managing department work.

<b>Agency Response</b>	
Concurrence	<b>Concur</b>
Implementation date	present-Dcember 2019.
Responsible agency	<b>DPD</b>
Comment	DPD staff are expected to enter their time, at a minimum, weekly. Interim management has emphasized the importance of this task repeatedly. We are working with supervisors and managing attorneys to ensure that they encourage and counsel staff enter their time in a timely fashion.

**Recommendation 6**

The Department of Public Defense should develop and institute a comprehensive set of policies and procedures outlining employee expectations. This guidance should align with department goals and objectives.

<b>Agency Response</b>	
Concurrence	<b>Concur</b>
Implementation date	December 2019-December 2020.
Responsible agency	<b>DPD</b>
Comment	DPD will partner with our supervisors, staff, and labor to refine and update existing policies and then to implement them. While this process will be time-intensive, it is more likely to be successful than top-down imposition of policies. The policies should align with our strategic plan, which has not yet been completed.

**Recommendation 7**

The Department of Public Defense should develop and document a training program, broadly communicate it to staff, and link it to performance measures. This program should align with department goals and objectives.

**Agency Response**

Concurrence	<b>Concur</b>
Implementation date	December 2020.
Responsible agency	<b>DPD</b>
Comment	DPD is committed to developing a training program that meets Departmental goals, staff needs, and ensures high-quality service to clients. We made significant progress in this during our annual conference, which included trainings focused on Washington law. Management intends to work with supervisors and staff to create curricula for each job class and to continue providing relevant training that will enable staff to meet Department goals and expectations. The trainings should align with our strategic plan, which has not yet been completed.

**Recommendation 8**

The Department of Public Defense should implement objective performance measures and use these measures to regularly assess employees and the department as a whole relative to department goals and objectives.

**Agency Response**

Concurrence	<b>Partially concur</b>
Implementation date	December 2020
Responsible agency	<b>DPD</b>
Comment	DPD concurs and embraces performance measures. Like most public defender offices, we must refine our measures. Appropriate measures could include consistent client contact (in and out of court), use of investigators, use of mitigation specialists, etc). Again, these measures must be developed in collaboration with staff and labor and align with our strategic plan.

**Recommendation 9**

The Department of Public Defense should implement a clear, efficient process for information sharing including revising the ethical walls policy to specify data that is allowed to be shared with the Director’s Office. The data to be included should align with department goals and performance measures.

**Agency Response**

Concurrence	<b>Concur</b>
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Implementation date	completed
Responsible agency	<b>DPD</b>
Comment	The ethical walls policy must be adhered to strictly in order to preserve DPD's ability to handle cases with conflicts. We have begun requesting closed case reports from the divisions to begin our work with PSB on the staffing model. We have not had any difficulties obtaining the data we need. We acknowledge previous management had difficulty obtaining data, but present management has not. Thus, we do not feel that any change is required to the policy.

### Recommendation 10

The Department of Public Defense should work with King County Information Technology to make sure that the new case management system it procures allows for the Director's Office to access and review aggregated division performance data in real time. The system should be able to access data that aligns with department goals and objectives.

#### Agency Response

Concurrence	<b>Concur</b>
Implementation date	2020, if funding is available
Responsible agency	<b>DPD and KCIT</b>
Comment	Legal Files, our current case management system does not meet staff or management needs. DPD is currently funded for Phase I of a new case management system project that concludes with vendor selection. Our RFP requirements will include the ability for the Director's Office to access and review aggregate division performance data in real time. Implementation is dependent on funding authority and system capabilities.

### Recommendation 11

The Department of Public Defense should develop and implement a plan to improve the accuracy and consistency of data entry across the divisions. Data that is part of this improvement plan should, at a minimum, include data relevant to selected performance measures.

#### Agency Response

Concurrence	<b>Concur</b>
Implementation date	December 2020
Responsible agency	<b>DPD</b>
Comment	See responses to recommendations five and ten.

**Recommendation 12**

The Department of Public Defense should work with King County Information Technology to make sure that the new case management system it procures addresses data reliability issues for data relevant to implemented performance measures and allows for more consistent time entry.

**Agency Response**

Concurrence	<b>Concur</b>
Implementation date	2020, if funding is available
Responsible agency	DPD and KCIT
Comment	See responses to recommendations ten and eleven.

**Recommendation 13**

The Department of Public Defense should design an efficient organizational structure that aligns with departmental goals and implement a plan outlining the transition to the new structure.

**Agency Response**

Concurrence	<b>Partially concur</b>
Implementation date	see response to Recommendation 2
Responsible agency	DPD and PSB
Comment	DPD is committed to working with PSB to examine DPD's structure. The auditor's presumption that DPD must restructure is based, at least in part, in the auditor's failure to understand the complexity of DPD operations and the Rules of Professional Conduct. PSB examined this issue in 2013 and did not find a re-organization was appropriate. While it is possible that a re-examination may yield different results, it must be done thoughtfully and carefully and in collaboration with PSB, staff, and labor partners. Please see DPD letter for further information.



## Auditor Response

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We are pleased that the Department of Public Defense (DPD) concurred with 11 of our 13 recommendations and partially concurred with the remaining two recommendations. It is a positive step that DPD recognizes the need for clear goals, objective standards, and intentional management structures.

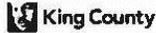
In general, there is complexity involved in implementing our audit recommendations. Based on the memo provided by DPD, this auditor comment clarifies what may reflect a misunderstanding of Recommendation 13, which states that DPD should take steps to design an efficient organizational structure that aligns with DPD goals.

Section 4 of this report (Organizational Structure) demonstrates one potential structure, but does not put forth that this is the only option. The audit recommendation does not prescribe what that structure should be, and as with other aspects of departmental management, the structure DPD settles on should align with departmental goals.

In 2015, the King County Public Defense work group recognized the challenges of reducing the number of departmental divisions in the short-term. However, it also specifically recommended that DPD consider alternative structures in the long-term.

During audit work, knowledgeable entities and experts agreed that DPD is providing high quality service. Managing the creation and maturation of a vital public agency is a challenge, and the unique nature of public defense makes it even more demanding. By moving forward with these efforts and the recommendations in this report, DPD can build on its excellent reputation and serve as a model for others in the field of public defense.

# Executive Response



**Department of  
PUBLIC DEFENSE**

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

**Anita Khandelwal  
Director of Public Defense**

710 Second Avenue, Suite 200  
Seattle, WA 98104

**(206) 296-7662** Fax (206) 296-0587  
TTY Relay 711

**KING COUNTY AUDITOR  
OCTOBER 11, 2018  
RECEIVED**

October 11, 2018

KyMBER Waltmunson  
King County Auditor  
Room 1033  
C O U R T H O U S E

Dear Ms. Waltmunson:

Thank you for the opportunity to review and comment on the proposed final report. We write jointly in response to the auditor's report on the Department of Public Defense (DPD). We agree that identifying goals and measuring progress towards achieving those goals is necessary to steer DPD toward forward-looking, effective, and efficient representation. We are committed to creating best-in-class measures that assure effective use of resources while enhancing quality of representation and morale. The process of creating such measures must include unions, supervisors, attorneys, and the Public Defense Advisory Board. DPD should not only be the best public defense agency in the country, it should also lead the country in measures that assure its continuing excellence.

We have identified a number of areas in which the Executive and DPD can work together to address other concerns flagged by the auditor. These include:

- Staff from Performance Strategy and Budget will work closely with DPD in the coming months to improve the staffing model and ensure a level of staffing that provides for effective representation and that stabilizes the department.
- DPD will work with the Executive's Continuous Improvement Team to identify areas where DPD operations can be run more efficiently.
- DPD will work closely with the Human Resources Department (HRD) to ensure that recruitments and hiring are done in a consistent and transparent fashion, and to ensure that DPD's hiring practices are helping it build a shared culture of practice. DPD will also work closely with HRD on employee engagement and standardization of discipline.

KyMBER WalTMunson  
October 11, 2018  
Page 2 of 2

- DPD is working with King County Information Technology (KCIT) to develop a proposal for a case management system that will provide ease of time entry for our staff while also providing management with easy access to aggregate data. We are requesting funding in the 2019-2020 budget in the amount of \$4,050,000 to complete this work.

We thank the auditor for its time and attention to DPD and look forward to working together to address the auditor's concerns. If you have any questions regarding our audit response, please contact Anita Khandelwal, Director of the Department of Public Defense at 206-263-2816.

Sincerely,



Casey Sixkiller  
Chief Operating Officer



Anita Khandelwal  
Director of Public Defense

Enclosure

cc: Rachel Smith, Chief of Staff, King County Executive Office (KCEO)  
Dwight Dively, Director, Office of Performance, Strategy and Budget  
Justin Anderson, Principal Management Auditor, King County Auditor's Office



# Statement of Compliance, Scope, Objective & Methodology

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## Statement of Compliance with Government Auditing Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Scope of Work on Internal Controls

We assessed internal controls relevant to the audit objectives. This included interviews with knowledgeable staff across the Department of Public Defense (DPD) in both case-managing divisions and the Director's Office. We also reviewed DPD policies, procedures, strategic planning, and training materials, as well as data from DPD's LegalFiles and HOMER data systems. In performing our audit work, we identified and made recommendations that resulted from concerns relating to internal controls. These included management structures, as well as systems for departmental consistency and accountability.

## Scope

This performance audit evaluated DPD's management of resources and workload since 2015, examining efforts across the department as a whole and the individual divisions. Data used ranged between January 1, 2015 and December 31, 2017, and included anonymized data from DPD's HOMER and LegalFiles systems.

## Objectives

The initial objectives of this audit were the following:

1. To what extent is DPD using data to manage resources effectively?
2. To what extent are DPD's case assignment processes efficient and meeting goals?
3. To what extent is DPD administering cases consistently?

## Methodology

### Objective 1

To assess the extent to which DPD is using data to effectively manage resources, we reviewed changes to DPD's budget between 2013 and 2017, and reviewed the staffing model that DPD uses to determine staffing needs. We also reviewed policies (such as the supplemental credit policy) and hours data from LegalFiles that impacts staffing model assumptions by influencing credits awarded.

### Objective 2

To assess the extent to which DPD's case assignment processes are efficient and meeting goals, we evaluated how effective its current approach is in keeping cases from getting sent to outside counsel (DPD's stated goal of the current departmental structure). We did this by developing a model that assesses the rate at which cases are expected to be sent to outside counsel due to conflicts of interest

under a different departmental structure. For the purpose of this model, a risk of conflict of interest occurs when a relevant party in a case (either a victim, co-defendant, or suspect) was previously represented by a division, or when a co-defendant is represented by one of the divisions on the same case. Cases are assumed to be sent to outside counsel for purposes of conflict if there is a conflict of interest with all divisions available for that case type.

The model assesses rates of conflict of interest using historical case assignment data (from DPD's HOMER database), creating a likelihood of a case having conflicts of interest with DPD divisions. These likelihoods are considered separately for each major case type and location (e.g. Seattle Felonies, Kent Misdemeanors, etc.). The model simulates new cases based on these historical likelihoods by case type. Instead of assigning cases to each division evenly, the model assigns all cases to a primary division unless the case had a conflict of interest with that division. If there is a conflict with the primary division, the modeled case is sent to a second, then the third, and then the fourth (if the modeled structure includes a fourth division). This is in contrast to the current approach, in which specific divisions within case types are not prioritized for cases.

**Objective 3**

To assess consistency in case administration across the divisions, we analyzed trial rates and case outcomes by case type and locations across the four divisions. We used anonymized data from LegalFiles for this analysis, looking at cases closed between January 1, 2015 and December 31, 2017. For the purpose of trials, case outcomes were grouped into cases with an outcome of 1) not guilty or guilty to a reduced charge, 2) guilty, or 3) unknown. Outcomes were based on the "reason closed" LegalFiles variable. Cases that did not involve new charges or that only involved a court appearance (e.g. probation-mandated appearances, review of warrants, etc.) were excluded from this analysis. We also evaluated the use of supplemental credits by division and case type.

To identify contributors to inconsistency in DPD we interviewed staff from across the four case managing divisions, as well as within the Director's Office. We reviewed existing DPD policies and draft strategic plans to understand what structures are guiding departmental work, and discussed and reviewed departmental training information. We also reviewed available case management data for consistent data entry.



# List of Recommendations & Implementation Schedule

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## Recommendation 1

**The Department of Public Defense should develop and apply a comprehensive strategic plan with goals, objectives, strategies, and activities that address quality and consistency for clients, and the effective use of county resources.**

IMPLEMENTATION DATE: December 31, 2019

ESTIMATE OF IMPACT: By developing a comprehensive strategic plan that clarifies DPD's priorities, DPD can ensure that the subsequent management structures discussed in this report advance departmental goals and objectives. Implementation of this recommendation is vital to the completion of the majority of recommendations in this report.

## Recommendation 2

**The Department of Public Defense should define, document, communicate, and implement a comprehensive strategy to complete the transition of the department's organizational elements into a unified county agency, and explain the steps and resources needed to do so.**

IMPLEMENTATION DATE: Present-December 2019

ESTIMATE OF IMPACT: By considering and clearly defining the strategy necessary to implement changes to DPD's management structures, DPD can anticipate and address challenges to this transition and ensure that it is successful.

## Recommendation 3

**The Department of Public Defense should formally adopt and publish case management standards that include expected ranges and limits for supplemental credits for individual attorneys, units, and across case types.**

IMPLEMENTATION DATE: December 2019

ESTIMATE OF IMPACT: By formally adopting standards for supplemental credits DPD can ensure that work expectations are consistent and clear across the department, increasing workload equity and consistency in supplemental credit use.

## Recommendation 4

**The Department of Public Defense should adjust the staffing model to include its formally adopted case management standards and to align with departmental goals and objectives.**

IMPLEMENTATION DATE: January through November 2019

ESTIMATE OF IMPACT: By adjusting DPD's staffing model to include formally adopted case management standards and to align with departmental goals and objectives, DPD can better estimate and account for future staff needs and budget requests.

## Recommendation 5

**The department should develop a plan to improve the accuracy and consistency of data entry across the divisions for data that informs the staffing model and mitigate reliance on poor quality data in managing department work.**

IMPLEMENTATION DATE: Present-December 2019

ESTIMATE OF IMPACT: By improving the accuracy and consistency of data that informs the staffing model, and mitigating reliance on poor quality data, DPD can improve the accuracy of staffing model predictions of staffing needs and budget requests.

## Recommendation 6

**The Department of Public Defense should develop and institute a comprehensive set of policies and procedures outlining employee expectations. This guidance should align with department goals and objectives.**

IMPLEMENTATION DATE: December 2019-December 2020

ESTIMATE OF IMPACT: By developing and instituting a comprehensive set of policies and procedures aligned with department goals, DPD can increase departmental consistency, ensure that employees are working towards shared priorities, and ensure that expectations within roles are equitable.

## Recommendation 7

**The Department of Public Defense should develop and document a training program, broadly communicate it to staff, and link it to performance measures. This program should align with department goals and objectives.**

IMPLEMENTATION DATE: December 2020

ESTIMATE OF IMPACT: By developing, broadly communicating, and implementing a training program linked to departmental goals, DPD can ensure that all employees are effectively trained in skills tied to departmental priorities. This will result in more consistency and ensure that employees are working toward shared priorities.

## Recommendation 8

**The Department of Public Defense should implement objective performance measures and use these measures to regularly assess employees and the department as a whole relative to department goals and objectives.**

IMPLEMENTATION DATE: December 2020

ESTIMATE OF IMPACT: By using objective performance tied to departmental goals, DPD can evaluate, improve, and communicate its performance. In addition, it can address areas for training and continuous improvement activities for both the department as a whole and individual employees.

## Recommendation 9

**The Department of Public Defense should implement a clear, efficient process for information sharing including revising the ethical walls policy to specify data that is allowed to be shared with the Director's Office. The data to be included should align with department goals and performance measures.**

IMPLEMENTATION DATE: Completed

ESTIMATE OF IMPACT: By creating a clear information sharing process DPD can ensure that the Director's Office has the information it needs to effectively analyze and refine departmental performance.

## Recommendation 10

**The Department of Public Defense should work with King County Information Technology to make sure that the new case management system it procures allows for the Director's Office to access and review aggregated division performance data in real time. The system should be able to access data that aligns with department goals and objectives.**

IMPLEMENTATION DATE: 2020, if funding available

ESTIMATE OF IMPACT: By making sure that DPD's new case management system allows it to access data aligned with departmental goals in real time DPD can ensure that the Director's Office has the information it needs to effectively analyze and refine departmental performance.

## Recommendation 11

**The Department of Public Defense should develop and implement a plan to improve the accuracy and consistency of data entry across the divisions. Data that is part of this improvement plan should, at a minimum, include data relevant to selected performance measures.**

IMPLEMENTATION DATE: December 2020

ESTIMATE OF IMPACT: By developing a plan to improve data relevant to selected performance measures, DPD can ensure that both the Director's Office and individual divisions have accurate information to use for effectively managing the department.

## Recommendation 12

**The Department of Public Defense should work with King County Information Technology to make sure that the new case management system it procures addresses data reliability issues for data relevant to implemented performance measures and allows for more consistent time entry.**

IMPLEMENTATION DATE: 2020, if funding available

ESTIMATE OF IMPACT: By working with KCIT to make sure its new case management system addresses data reliability issues relevant to selected performance measures, DPD can ensure that both the Director's Office and individual divisions have accurate information to use for performance analysis.

## Recommendation 13

**The Department of Public Defense should design an efficient organizational structure that aligns with departmental goals and implement a plan outlining the transition to the new structure.**

IMPLEMENTATION DATE: 2020, if funding available

ESTIMATE OF IMPACT: By designing and planning for organizational structure aligned with departmental goals, DPD can ensure that its structure reinforces departmental priorities rather than historical conditions.



# KING COUNTY AUDITOR'S OFFICE

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## Advancing Performance & Accountability

KYMBER WALTMUNSON, KING COUNTY AUDITOR

**MISSION** Promote improved performance, accountability, and transparency in King County government through objective and independent audits and studies.

**VALUES** INDEPENDENCE - CREDIBILITY - IMPACT

**ABOUT US** The King County Auditor's Office was created by charter in 1969 as an independent agency within the legislative branch of county government. The office conducts oversight of county government through independent audits, capital projects oversight, and other studies. The results of this work are presented to the Metropolitan King County Council and are communicated to the King County Executive and the public. The King County Auditor's Office performs its work in accordance with Government Auditing Standards.



This audit product conforms to the GAGAS standards for independence, objectivity, and quality.