

**The State of
King County
Public Defense**

2016



King County



King County

King County Public Defense Advisory Board

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EXECUTIVE SUMMARY

A little over a year after this Board's inaugural Report on the State of Public Defense, the Department of Public Defense (hereafter "DPD" or "the Department") is still in the process of formation. The leadership and staff are building this new organization while continuing to meet the urgent need of more than 23,000 indigent clients for high-quality representation. This Report assesses the Department's progress and identifies the challenges it faces.

In the section entitled, "What Public Defenders Do," this Report describes the breadth of public defense services provided by the Department. Public defenders, legal assistants, investigators, mitigation specialists and their administrative support teams represent citizens facing loss of their liberty. Criminal convictions can have life-changing consequences even in the absence of incarceration, including, among others, onerous financial obligations, deportation, difficulty finding employment, and the loss of educational and military service opportunities. The Department's employees also handle many non-criminal cases, including involuntary commitment and dependency cases, civil matters with consequences that can be as devastating as criminal convictions for the parties and their families. In preparing this Report, the Board confirmed that the Department's employees, in all positions, worked hard to protect individual clients' rights and to give voice to clients' collective interest in justice system improvement. The Report identifies areas where the Board believes additional resources, training, and support are needed to ensure the best results for all clients.

The merger of four independent public defense workforces into a single county department has been accompanied by significant challenges, especially with regard to the structure and governance of the new Department. Under the former system, each public defense agency was independent of the others, making it a simple matter to avoid prohibited conflicts of interest and protect privileged communications by assigning individuals with adverse interests (e.g., co-defendants in criminal cases) to different non-profit agencies. After the merger, adverse parties are now represented by attorneys and staff within the same Department, albeit in different divisions. To assure that the Director and her entire Leadership Team do not have access to case-related information, including client communications, extensive protective measures have been implemented, resulting in management challenges not faced in other government agencies. In addition, the merger of case management systems and the introduction of major business process changes have significantly complicated the administration of the Department's operations.

The process of integrating the four former non-profit agencies into a single governmental entity is ongoing. The non-profits were different from each other and from any other county department. The employees of each agency, now Division, entered their relationships with the new Department and with the County having experienced different leadership, management and administrative styles, policies and practices. The new director, Lorinda Youngcourt, has committed herself to fostering a client-centered department-wide organizational culture, drawing on the County's history and strengths, as well as her own experience creating and managing a public defense agency elsewhere.

In her first year, Ms. Youngcourt has laid the foundation for long-term constructive working relationships with the Executive, the County Council, the Budget Director, the Prosecuting Attorney, judges, and the Advisory Board. Moving quickly to understand the complexities and challenges of the County budget, she has played an important role on the Budget Work Group and in negotiations that preserved key

department positions that had been designated for elimination in the prior year's biennial budget process. She led negotiations that resulted in the signing of union contracts that substantially increased compensation for Department personnel and brought them closer to parity with counterparts in the Office of the Prosecuting Attorney. Ms. Youngcourt has proven to be an effective advocate for the Department, its employees, and their clients.

Director Youngcourt also embarked on an aggressive restructuring program, filling newly created Leadership Team positions in the Director's Office and within the divisions to focus on improved training, supervision, evaluation, support and oversight of assigned counsel, policy development, and quality of representation. As discussed more fully in this report, several of these initiatives have already brought positive results, while for others, it is too soon to tell whether they will produce the desired outcomes.

This ambitious agenda has the Department on a promising path forward, but the pace and effects of change have played out within an already stressful work environment. Accordingly, it is essential that the Department leadership and staff work together toward the shared goals of consistent and clear mutually respectful communication and constructive engagement of employees in all positions.

Against this backdrop, this Report highlights the following issues because of their importance to the Department's immediate and long-term success in providing effective representation to the Department's clients:

- 1) In partnership with the Office of Performance, Strategy and Budget (PSB), the Department must develop a reliable, sustainable, easy-to-administer staffing model that will provide a basis for effective representation and sound budgeting;
- 2) With the support of King County Information Technology (KCIT), the Department must improve the current case management system so that it provides the necessary level of ease of use and robust operational power that the Department needs for day-to-day and systemic purposes, including efficient identification and management of assignments that create divisional or departmental conflicts of interest;
- 3) The Department must enhance its communication and consultation processes so that employees have an opportunity to understand and contribute to the development and implementation of a shared vision for a nationally preeminent public defense agency;
- 4) Employees at every level of the Department should identify with the Department of Public Defense as a whole, contributing to improvement of the entire Department's ability to provide outstanding service to all public defense clients;
- 5) The Department, Council, and Executive must find acceptable workspace for public defense personnel, especially at Involuntary Treatment Act court facilities;
- 6) Because the Assigned Counsel panel provides essential representation to public defense clients, the Department must develop opportunities for joint-training programs and coordinated policy implementation where appropriate and practical;
- 7) The Department should continue to develop Department-level training, enhanced by practice-specific, case-based, division-level training, for all employees;
- 8) The Department must ensure that investigators have adequate resources to perform efficiently and effectively;

- 9) The Department must ensure that its process for hiring summer interns is designed to produce a diverse corps; and
- 10) The Department should ensure that the results of the process of designating senior attorneys are communicated transparently so that all employees understand how decisions were made.

These are the type of complicated issues to be expected in a complex process of organizational change. The Board hopes that the analysis and recommendations contained herein help the Department, the Council, and the Executive as the Department moves through that process, enabling the Department's committed and talented employees to fulfill their mission of service to their clients.

INTRODUCTION

In its inaugural Annual Report, issued in April 2015, the King County Public Defense Advisory Board (“the Board”) described the state of public defense in the County shortly after the appointment of Lorinda Youngcourt as the first Director of the Department of Public Defense. This second report comes after a year of significant change within the Department, including the long-delayed ratification of collective bargaining agreements for DPD employees, substantial staffing and policy changes, modest technological upgrades, and the creation of a new management structure. In addition, in the first half of 2015, DPD leadership worked with members of the Board and other stakeholders in a Budget Work Group led by the County PSB Director to develop a temporary funding model that would sustain the staffing needed to adequately serve clients and comply with caseload and other professional standards through the current biennium and until a jointly developed comprehensive PSB/DPD funding model could be developed for the future.

In preparing this report, the Board:

- held four town hall meetings (three in Seattle and one in Kent) to which all Department staff were invited;
- met with presiding judges of the Superior, District and Seattle Municipal Courts, the King County Prosecuting Attorney, the members of the DPD Leadership Team, including the managing attorneys, as well as representatives of the Assigned Counsel Panel;
- worked closely with the Department’s administrative staff to gather data regarding the Department’s operations;
- reviewed the report on the Department’s compliance with the American Bar Association’s Ten Principles for a Public Defense Delivery System submitted to the Council earlier this year by the Director; and
- met separately with the Director to discuss the critical issues the Board identified through the aforementioned steps.

To the extent possible given the limits on its resources and authority, the Board sought to reconcile the occasionally clashing perspectives and to arrive at a clear assessment of the Department’s operations. Having done so, the Board then identified those issues deemed most significant to the ongoing development of the Department and its ability to provide its clients with the high-quality services to which they are entitled. These are the issues addressed within this report.

After a general description of the scope and nature of the Department’s services, this Report addresses significant developments in the Department’s caseload, changes to the Department’s organizational structure, and issues related to the Department’s workforce and infrastructure. After a set of observations regarding efforts to advance equity and social justice within the County’s criminal justice system, the Report concludes with a set of recommendations.

WHAT KING COUNTY PUBLIC DEFENDERS DO

DPD'S SERVICES

The King County Department of Public Defense represents people who are accused of a crime or face other serious infringements on their liberties and who cannot afford an attorney. The Department consists of a Director's Office and four divisions.¹

Each division provides direct service to clients, through the efforts of attorneys, investigators, mitigation specialists, paralegals and administrative support personnel. The Director's Office oversees policy implementation and direction, training, department-wide administration, data analysis, budget development and human resources; it also screens clients for eligibility, assigns cases to the divisions, and provides other administrative support. The Director's Office also administers the Assigned Counsel Panel, a corps of private attorneys who represent individuals the Department cannot serve, for reasons of professional ethics or capacity.

WHERE DPD WORKS

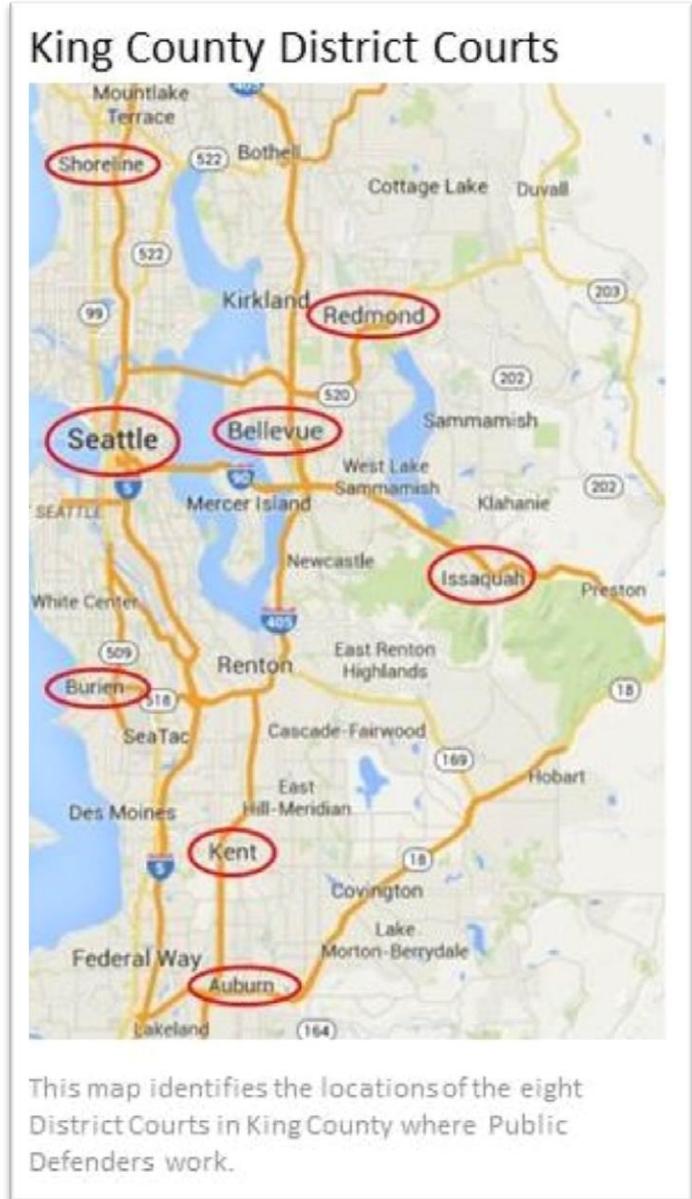
The Department represents clients in:

King County Superior Court in Seattle (two locations) and Kent

King County District Court at eight locations (Seattle, Kent, Auburn, Bellevue, Burien, Issaquah, Redmond and Shoreline)

Involuntary Treatment Act Court at Harborview Medical and other facilities around the County

Seattle Municipal Court in downtown Seattle.²



¹ The ethical underpinnings of the multi-division structure and the separation of DPD leadership from client representation are discussed on page 11, *infra*.

² The Department's work in Seattle Municipal Court is governed by a contract with the city. The other two areas of work performed by the Department that do not discharge an obligation of the County are the representation of

THE TYPES OF CASES

Capital Defense

Pursuant to RCW 10.95.030, a defendant may be sentenced to death for the offense of aggravated First Degree Murder. In order to ensure that a defendant is well-represented when facing this possible punishment, the Washington Supreme Court requires that at least two experienced attorneys be assigned to cases in which the state seeks (or may seek) the death penalty, with at least one of those attorneys being a member of the panel of Supreme Court-approved capital attorneys.³

Felony Defense

A felony carries a possible sentence of more than one year in prison. These offenses can range from Class C offenses, such as forgery, theft and possession of illegal drugs, to Class A offenses, such as premeditated murder and Rape in the First Degree. Felony defendants have the right to a jury trial within 60 days of arraignment if they are in custody or within 90 days of arraignment if they are not in custody. A felony conviction in a non-capital case can result in any of a range of sentencing alternatives, including prison sentences of up to life in prison without the possibility of parole for the most serious offenses. Felony convictions also carry a wide range of other serious consequences that may include deportation, legal financial obligations, disqualification from employment, educational, and housing opportunities, ineligibility for military service, inability to obtain financial aid, restrictions on travel, the duty to register as a sex or kidnapping offender, revocation of the right to possess a firearm, and a stigmatizing criminal record.

Misdemeanor Defense

Misdemeanors carry a maximum penalty of 364 days in jail. Examples of misdemeanor offenses include Driving Under the Influence of Alcohol, domestic violence assault, shoplifting, harassment, disorderly conduct and transit fare evasion. In addition to jail time and probation, misdemeanor convictions can carry a wide range of non-confinement consequences, including deportation, loss of driving privileges, financial obligations, revocation of the right to possess a firearm and loss of employment and housing opportunities.

Juvenile Defense

Juvenile court jurisdiction encompasses misdemeanors and felonies allegedly committed by individuals under the age of eighteen. Adjudication as a juvenile offender can result in many of the same consequences that apply to adults, such as confinement (until the age of 21), the duty to register as a sex offender, legal financial obligations, and a criminal history record that can create barriers to employment, housing, and education. Many juvenile clients have been suspended or expelled from school and require advocacy in order to be able to regain access to education.

The juvenile justice system is intended to be rehabilitative in addition to holding youthful offenders accountable. To obtain positive outcomes for young people who are in this system, the defense needs

parents and children in dependency cases and defendants in Sexually Violent Predator proceedings, all of which are governed by contracts with the state Office of Public Defense.

³ Special Proceedings Court Rule (SPRC) 2.

multidisciplinary and multi-system expertise. DPD mitigation specialists can have a significant impact, helping youth, many of whom are from poor families and neighborhoods, access services and get their lives on track.

Parent Representation in Dependency Cases

Dependency cases involve allegations that one or more children have been abused, neglected, or abandoned. In such cases, parents require counsel to defend against the allegations and advocate for them as they work to retain or regain custody of their children. These cases can last two or more years as the court and the parties consider whether and when the children can safely be returned to their parents and what alternative permanency options exist. Dependency cases require multidisciplinary expertise, as attorneys work with clients who often need intensive services to achieve their goals.

Child Advocacy (Dependency, Children in Need of Services, Youth at Risk, and Truancy)

Children have a right to assigned counsel in a number of non-criminal proceedings:

Dependency proceedings: Children over 12 are appointed counsel to advocate for their interests when they are removed from their parents' care. This representation may continue until the age of 21 if they are eligible for extended foster care. In addition, children under the age of 18 have a statutory right to counsel if they have not been adopted within six months after their parents' rights have been terminated.⁴ Attorneys for children in dependency proceedings play a critical role in protecting children's health, safety, and well-being while in the state's custody and in helping abused and neglected children attain permanent homes.

Child in Need of Services (CHINS) proceedings: A child or a parent may file a CHINS petition in order to seek placement for the child outside of the home. The orders may be in place for up to nine months to allow for the provision of services to reunite the family. Attorneys are appointed at the time a petition is filed, and representation continues until the petition is dismissed.

At Risk Youth (ARY) proceedings: These parent-initiated proceedings can result in a court order that requires the child to comply with certain conditions under threat of incarceration pursuant to the court's civil contempt powers. Attorneys are appointed at the time of filing and continue until the petition is dismissed, up to 18 months later.

Truancy proceedings: Children of mandatory school attendance age may become subjects of truancy petitions if they are absent without cause. Upon finding a student truant, a court may enter an order requiring school attendance, which can then be enforced through a contempt citation and secure detention. Attorneys are appointed when a contempt motion is filed.

⁴ RCW 13.34.100(6)(a).

Involuntary Treatment Act

Under the Involuntary Treatment Act, an individual may be committed to a hospital if s/he suffers from a mental condition such that s/he is a danger to him/herself or others. Representation in these cases often goes on for many months or years, as the determination of dangerousness is revisited according to a statutory timetable. As described within, the Involuntary Treatment Act Court is based at Harborview Medical Center, with respondents and their DPD attorneys often located at the facilities where the respondents are held for treatment.

Civil Contempt

Attorneys are appointed to indigent parents when a motion for contempt is filed by the Child Support Enforcement Division of the King County Prosecutor's Office or another adverse party in a family law matter. DPD attorneys continue to represent clients until the contempt proceeding is dismissed, which can take months or even years. On occasion, DPD is ordered to provide representation in contempt matters other than family law cases.

Sexual Offender Civil Commitment (Sexually Violent Predators)

Pursuant to RCW 71.09, individuals may be confined at the state's Special Commitment Center for sexually violent predators upon a finding that the individual would be likely to engage in predatory acts of sexual violence if not confined in a secure facility. These complex, lengthy civil proceedings can result in indefinite detention for offenders who have already completed criminal sentences. After the initial commitment proceedings, individuals confined under this statute have a right to annual reviews and periodically may petition the court for less restrictive alternatives or unconditional release.

Specialty Courts

Specialty courts (also called problem-solving, treatment, or therapeutic courts) are an increasingly important part of the criminal justice system. In these courts, the adversarial processes of traditional criminal courts are replaced by a collaborative model in which attorneys, treatment providers, and probation officers work together to address the issues underlying a defendant's alleged criminal conduct, with the goals of avoiding incarceration, reducing recidivism, and creating a safer community.

King County has been at the forefront of these developments, and DPD attorneys and mitigation specialists have been essential in the development of these programs and in representing clients within these courts. In these courts, attorneys must have the ability to assess the legal merits of cases and advise clients accordingly while also working with other court actors to facilitate holistic solutions and advance the client's long-term goals, which often have significant non-legal components. Specialty court attorneys often follow clients from arraignment to case closure, which may take as long as two years. There are frequent hearings, and the attorneys must develop strong bonds of trust with clients in order to effectively advocate for and advise them as they progress, often unevenly, through the proceedings.

DPD's dedicated attorneys and mitigation staff help specialty courts in King County, listed below, maintain their reputation as some of the best in the country:

- Adult Drug Diversion Court
- Juvenile Drug Court
- Family Treatment Court
- Mental Health Court
- Domestic Violence Court
- King County Regional Veterans Court
- Seattle Veterans Treatment Court
- Seattle Community Court

DPD attorneys practicing within the District Court's Regional Mental Health Court and Seattle Municipal's Mental Health Court also take on much of the Department's workload in competency evaluations. While this set of cases is distinct from those for which the Mental Health Court was created, the legal, technical, and cultural expertise of the Mental Health Court staff offers a more efficient and compassionate setting for these delicate proceedings.

CASELOAD STANDARDS

The Washington Supreme Court requires every attorney providing indigent defense services to certify annually that s/he is in compliance with caseload standards. The standards establish the following limits on attorney caseloads, by case type:

Felonies:	150 per year
Misdemeanors:	400 per year ⁵
Juvenile Offender:	250 cases per year
Juvenile Dependency:	80 open cases at a time
Civil Commitment:	250 cases per year

The standards do not presume that attorneys should be working at the maximum caseload level at all times. Rather, the standards state that the limits "should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources." The standards also call for the use of case weighting so that cases that are more or less demanding than an average case are accurately reflected in the ultimate caseload determination.

⁵ Because King County employs case-weighting in order to recognize the additional complexity of some misdemeanors, the Standards allow for a cap of 300. In counties that do not use a validated case-weighting system, the cap is 400 misdemeanors per year.

2015 Caseload Data

The table below illustrates the Department's caseload in 2015 by practice area and in comparison to 2014:

Practice Area	2015 Clients	2014 Clients	% Change	2015 Assignments	2014 Assignments	% Change	2015 Credits
Felony	4852	4854	-0.04	5543	5791	-4.28	7963
Felony Review	332	336	-1.19	394	329	19.76	216
Drug Diversion Court	416	413	0.73	630	467	34.90	465
KC Misdemeanor	3985	5367	-25.75	4355	5734	-24.05	3373
KC Misdemeanor Probation review	1695	1693	0.12	2073	1774	16.85	1823
KC MH Court	179	610	-70.66	204	859	-76.25	204
SMC	3715	3328	11.63	5043	4145	21.66	5043
SMC Probation Review	1920	2022	-5.04	2885	2555	12.92	2885
Juvenile Offender	872	1187	-26.54	1584	1752	-9.59	1505
JO Probation review	362	461	-21.48	633	518	22.20	215
Status Offenses	241	313	-23.00	256	346	-26.01	314
Dependency	1432	1564	-8.44	1518	1606	-5.48	934
Contempt	119	145	-17.93	119	147	-19.05	0
ITA	3406	3148	8.20	3769	3586	5.10	3906
SOC/SVP⁶	5	9	-44.44	5	9	-44.44	0
Total	23531	25450	-7.54	29011	29618	-2.05	28846

The total number of assignments, i.e., new cases, was not significantly different from the year before, but there was a good deal of change across the types of cases. The Department saw significant increases in the number of assignments in Seattle Municipal Court and in Drug Diversion Court and significant decreases in King County Misdemeanor and Juvenile Offender assignments, and a dramatic drop in assignments in King County Mental Health Court. The increase in assignments in Involuntary Treatment Act proceedings was not large in numerical terms, but, given the challenging nature of those cases, discussed within, the increase was still substantial. The decrease in SOC/SVP cases reflects a decision by the County to limit its work under this contract with the state to cases filed in King County.

CAPITAL CASES

At the time of the 2015 Report, the Department was representing three clients facing the death penalty with 2015 trial dates and a fourth client who could face the death penalty but was held at the time in New Jersey on other matters. In the first two cases to go to trial, Department attorneys successfully argued for their clients' lives to be spared. In response to the verdict in the first of these cases, the King County Prosecuting Attorney announced that his office would not seek the death penalty in the Department's third case, which involved a co-defendant. That third case concluded in early 2016, leaving the Department with only the one potential capital case ongoing, that of the client in New Jersey, and another

⁶ Sexual Offender Civil Commitment/Sexually Violent Predators

client currently represented by a death-penalty-qualified attorney because of the possibility that the client could face that punishment.

JUVENILE CASES

In response to the substantial decrease in Juvenile Offender cases shown in the table, the Department has reduced the number of divisions practicing in Juvenile Court from three to two. Given the propensity of juveniles to commit crimes in groups, this may result in increased utilization of Assigned Counsel in Juvenile Court. The Department is monitoring this change to assess its fiscal and other impacts. It is also likely that the DPD attorneys practicing in Juvenile Court will have caseloads with an increased concentration of serious cases, including sex offenses, a significant component of Juvenile Court activity.

DEPENDENCY CASES

The Department is currently setting the caseload cap for its dependency lawyers at 65 open cases. This is lower than the state standard for parent representation, which is 80 cases. DPD has adopted this policy in recognition of the fact that its dependency lawyers carry mixed caseloads, representing parents and children, and that the unique demands of this work require lawyers to be available for hearings that occur often, as in Family Treatment Court, and on short notice, as with the critical shelter care hearings for child clients. These cases have life-long consequences for children and families, and it is essential that all attorneys working on such cases have the time to master their legal and factual complexities, work with multiple other system actors, and develop appropriate long-term solutions.

The County is not currently receiving full-cost recovery for its dependency representation, a matter which is under discussion among County, Department, and State officials.

MISDEMEANOR CASES

The table above shows a large increase in misdemeanor cases in Seattle Municipal Court (SMC) and a roughly similar decrease in misdemeanor assignments in King County District Court. To address the increase in SMC cases, the Department reassigned a number of attorneys to this court. There were some difficulties in this rapid adjustment process. Several of the attorneys were assigned cases at excessive rates in light of their experience. Investigators working in SMC were burdened with a heavy load of assignments, which burdens were further complicated by the reluctance of Seattle Police officers to be interviewed without a prosecutor present. SMC judges have voiced concerns – to the Department and to the Board – about specific instances of what they believe was poor performance or preparation on the part of defense counsel.

Aware of these concerns and committed to ensuring that all attorneys have the training, supervision, and support they need to effectively represent their clients in SMC as well as other courts, the Department has amended its contractual agreement with the City of Seattle for this work, extending the relationship through December 2017 and receiving a commitment for the resources necessary to ensure a strong defense for all clients in this court. The Board views this extension as a very positive development, as the Department and its clients derive many benefits from the Department's presence in this court:

- As a matter of social justice, it is important for the public defense community to be active in this court, which is one of the central nodes of the criminal justice system for many citizens;

- The Department’s presence in SMC aids coordination among attorneys whose clients have cases in both SMC and KCSC;
- SMC is the site of several specialty courts, and it is important for the Department to remain engaged in these forums;⁷ and
- It offers a valuable training forum for new attorneys.⁸

ITA COURT

With the County no longer contracting for ambulance services to transport ITA respondents from outlying hospitals to Harborview Medical Center for hearings, the court has implemented a video hearing procedure, in which the judge, prosecutor, and witnesses are present in a hearing room at Harborview, with the respondent and DPD counsel participating via remote video hookup from the hospital where the client is being treated. To address the increased need for beds, the County has recently increased the number of hospitals being used for such clients, sometimes with only a single bed in a particular hospital.

This presents a number of challenges. In order to interview, advise, and support their clients, DPD attorneys must be present with them during the hearing. DPD attorneys believe that they cannot be fully effective advocates for their clients when they are not able to be present in the room with the judge, opposing counsel, and witnesses.⁹ The video technology enables counsel and the respondent to see and hear (and be seen and heard), but it necessarily has a distancing effect, which, among other things, limits their access to sometimes critical information available outside the camera’s eye. The Department recognizes that for some clients their condition is such that that transportation for a hearing is not advisable. However, that does not warrant wholesale adoption of a practice that may put some respondents at a disadvantage.

Apart from potentially inhibiting their effectiveness, these new procedures also greatly increase the strain upon DPD attorneys in ITA Court. Consistent with national standards, the Department employs a vertical defense approach in ITA Courts, as in other courts, with a single lawyer handling all aspects of the proceeding for each individual client. With the hearing locations effectively decentralized by the video process, ITA lawyers spend a great deal of time shuttling among the several different hospitals. ITA lawyers report regularly ending their work day at 7:00 p.m. or later, as the only time to meet with clients and obtain records is after they have finished traveling to video hearings. This complex, multi-disciplinary, emotionally demanding work is challenging under the best logistical circumstances; the current arrangement is far from optimal and necessarily increases the burden on these attorneys and on the Department more generally. Moreover, it comes at a time when caseloads are increasing.¹⁰ The Department will need to continue to work with the other ITA stakeholders to develop responses that ensure effective representation, sustainable work conditions, and efficient use of resources.

⁷ One participant at a Town Hall meeting stated that practicing in alternative, problem-solving courts has helped attorneys develop client communication and problem-solving skills that are valuable in all practice settings.

⁸ The Department has also assigned experienced attorneys to work in Municipal Court, and the contract requires this. The presence of these attorneys has been quite valuable, as a model and resource to the junior attorneys and as a way of upholding the highest standards of practice in this court.

⁹ The Department has sought to contest this practice through litigation, unsuccessfully to this point.

¹⁰ The Legislature recently enacted what has been referred to as “Joel’s Law,” which authorizes family members to file petitions for involuntary treatment, under certain circumstances. The Board lacks the data to assess whether the increase in cases is related to this change, but it is certainly something for the Department to monitor.

ORGANIZATIONAL STRUCTURE

MAINTAINING AN ETHICALLY SOUND DEPARTMENTAL STRUCTURE

The practice of law in Washington is regulated by mandatory Rules of Professional Conduct adopted by the Washington Supreme Court. These ethics rules govern the activity of all attorneys, individually, and each of the four divisions institutionally. The prohibition of conflicts of interest and the requirement of strict protection of confidential case-related information frequently come into play in criminal cases.

Compliance with these rules became more complicated when the previously independent non-profit defense agencies became part of a single county department. For example, the obligation to provide representation free of conflicts of interest imposes constraints on the manner in which cases can be assigned and attorneys deployed. Likewise, the obligation to preserve the confidentiality of case-related information limits the type and quantity of information that can pass beyond the division level. In light of these rules, the office has been relying upon a screening system which bars any interchange of confidential information outside of the division to which a case is assigned. Maintaining such ethical walls is necessary for the Department to be able to assign multi-defendant cases among the four divisions without compromising the ethical responsibilities of attorneys and supervisors.

This has created both management and training difficulties, since only aggregate data not specific to an individual case or client can be shared outside of each division structure. It also requires that case-specific observation and training be performed at the divisional level rather than at the DPD level.

The Department has retained outside counsel with expertise in legal ethics to advise the director and senior management on the appropriate implementation of the ethical requirements. This is critical to the Department's ability to deliver efficient, ethical, and constitutional defense services and to avoid liability for the Department's employees individually and the County as an entity.

DEVELOPMENT OF A RELIABLE STAFFING MODEL

At the time King County's 2015-2016 biennial budget was approved, the Council did not have access to complete and accurate information regarding the cost of adequately staffing the new Department of Public Defense. Consequently, the Council approved the Department's budget subject to provisos that maintained staffing levels pending a report by an executive branch-led Public Defense Budget Work Group assigned to study the sufficiency of staffing and other resources. Without the provisos, 40 FTE positions in the Department would have been eliminated.

The Director of the Office of Performance, Strategy and Budget (PSB) led the Work Group, and representatives of the Executive, the courts, the Department, and the Advisory Board participated. The Work Group met weekly for about four months, reviewing and assessing information regarding caseloads, mandatory caseload standards, use of assigned counsel, organizational structures, training, and funding.

On June 15, 2015, the Work Group issued its report, making recommendations relating to the Department's structure, policies, and operations. These included restructuring to standardize quality assurance through better training and supervision, improve practices relating to assigned counsel, and manage administrative functions more efficiently. Based on data that was not available during

development of the 2015-2016 biennial budget, the Work Group report recommended adjusting attorney and supervisor levels to align with evidence-based workload requirements.

On September 21, 2015, the County Council unanimously passed a \$9 million supplemental appropriation for the Department consistent with the staffing and other recommendations made in the Work Group report. As a result of the supplemental appropriation, none of the positions eliminated in the initial budget were cut, and the Department was thereby able to provide clients with consistent, quality representation.

Beginning even before the supplemental appropriations were approved, DPD has been collecting the most recent and most reliable data that PSB and DPD deemed necessary to determine staffing requirements mandated by Washington Supreme Court caseload standards and contracts with the unions representing County employees. This data will be processed in accordance with a PSB-created model to determine the number of positions required to perform essential public defense services. Some of the significant features of the model are:

It recognizes that routine changes in the workforce (e.g., new hires, retirements, resignations, promotions, family leaves, and illnesses) necessitate some shifting of cases and make it impossible for each attorney to continuously maintain a maximum-level caseload. Unlike the former independent agencies, the Department is not able to respond to such developments by hiring temporary employees to short-term contracts. Consequently, the needed capacity must be built into the Department's staffing model in order to avoid assignments in excess of caseload or reliance on the assigned counsel panel to handle cases solely for reasons or capacity.

The model enables the Department to engage in strategic, forward-looking hiring, creating a pool of qualified prospects. This would allow the Department to recruit law students in their third year of law school, as most public defender offices (and other non-profit, government, and for-profit law offices) do, thus enabling the Department to compete for the most committed and talented future attorneys. DPD's ability to compete for talent is also central to the Department's ability to recruit, mentor, and build a diverse and representative workforce. King County's commitment to equity and social justice, and the unique role of public defenders demands workforce diversity for credible and effective advocacy within a criminal justice system that disproportionately affects communities of color, the poor, and the LGTBQ community.

The Board will review the model further and anticipates recommending implementation of the final product of PSB's and DPD's work. The Board will submit a more comprehensive assessment of DPD's current budget situation in its Annual Budget Report, to be submitted this fall.

LEADING A UNIFIED DEPARTMENT

Departmental Leadership

In its 2015 Report, the Board stated its belief that "the consolidation of the county's public defenders into a single institution offers significant opportunities to enhance service to clients and the experience of the staff" and voiced support for the "the organizational restructuring that will be necessary to achieve this objective." As described in the Director's Report on the Department's compliance with the American Bar Association's Ten Principles for Quality Public Defense, Director Youngcourt developed a new

leadership structure for the Department. She selected a Deputy Director and filled the following new (or in some cases redefined) positions:

- Chief of Operations
- Policy Director
- Training Director
- Assistant Training Director
- Assigned Counsel Director
- Misdemeanor Practice Director
- Felony Practice Director

Division-Level Leadership

With the Department assuming a wide range of administrative responsibilities, the Director restructured division-level leadership, creating the position of Managing Attorney for each division. In the fall of 2015, the Director appointed Managing Attorneys for each of the four divisions. Three of the Managing Attorneys were named to lead a division in which they had long experience.¹¹ The fourth was hired from outside the Department. After the Managing Attorneys were selected, supervisors were chosen, some with experience in that role and others new to it but with records demonstrating promise.

EVALUATION OF THE NEW LEADERSHIP STRUCTURE

The Board believes that the new leadership structure provides a good framework for achieving both internal efficiency and external impact.¹² In meetings with the Board, some DPD staff characterized the Leadership structure as “top-heavy,” i.e., with too many positions for people without caseloads and who cannot, because of ethical constraints, consult with lawyers on cases. The Board does not share this view. The positions of Training Director, Policy Director, and Assigned Counsel Director all address major concerns the Board raised in its 2015 Report. In their brief tenures so far, the Misdemeanor and Felony Practice Area Directors have demonstrated the internal and external benefits of their positions. They are able to identify and act upon concerns raised within and outside the Department, addressing courts, prosecutors, jail officials, and other stakeholders with a clear, strong voice.

The designation of a Policy Director has been a crucial step in ensuring the Department’s ability to address systemic issues. The Policy Director has reviewed all proposed legislation and supported Director Youngcourt’s efforts to ensure the Department’s voice is heard in County leadership discussions.¹³ The Policy Director also took an active role in litigation related to the disclosure of sexual deviancy evaluations and the prolonged detention of individuals awaiting competency evaluations. Unfortunately, she has had to devote a great deal of her time to responding to Public Records Act requests. The non-profit organizations did not have this obligation. The Department must respond to requests in a timely

¹¹ One of these Managing Attorneys has since resigned and been replaced with an Interim Managing Attorney. Shortly before this Report was to be published, a new Managing Attorney was hired after a national search.

¹² A national expert in public defense worked with the county’s Human Resources staff to facilitate a day-long meeting to assist the entire leadership team in developing of the skills necessary to be effective in these critical roles. The Board supports the Department’s efforts to build its capacity via such efforts.

¹³ Ms. Youngcourt has repeatedly assured the Board that she has had the freedom to disagree with other county leaders when necessary to protect the interests of the Department and its clients. Such independence, of course, is a prerequisite for an effective public defense system.

manner,¹⁴ but it is imperative that the Department have the capacity to do so without diverting so much of the Policy Director's time and energy to this task. Because the Assistant Training Director has been on leave for much of the time since being appointed to that position, it is difficult to assess the impact and potential of the position. The Chief of Operations performs a wide array of essential tasks.

The Managing Attorneys play a pivotal role in the Department's management structure.¹⁵ With the assistance of supervisors,¹⁶ they are well-positioned to: (1) ensure that the discussions of the leadership team are informed by the on-the-ground concerns of the staff ; (2) clearly communicate policy to staff; and (3) ensure that the daily operations within the divisions are consistent with Department policy.

COMMUNICATION AND CONSULTATION

In meetings with staff, the Board heard complaints about a number of new or updated policies and practices, e.g., the review of requests for expert services, the requirement that attorneys visit in-custody clients within 24 hours of assignment, and the responsibility for providing on-call legal advice outside of normal working hours.¹⁷ The Board believes that decisions on such matters properly rest with the Department's leadership. However, the Board also believes that it is incumbent on the Department's leaders – at all of the levels described above – to improve the processes of intra-departmental consultation and communication. Employees in positions across the Department reported that they feel burdened by mandates they perceive as imposed upon them, and morale has suffered as a result.

The implementation of the expert services policy demonstrates the impact of effective consultation and communication. The Department introduced a review procedure to manage such requests and, where possible, consistent with client needs, limit costs by ensuring that it paid the same expert (or equally qualified experts) the same rates for the same services in different cases. Attorneys worried that the review process would restrict their use of highly qualified experts. The Felony Practice Director worked with the attorneys to look more closely at their needs and refine the process in ways that ensure quality while preserving fiscal prudence. This is precisely the sort of interplay between leadership and staff that is essential for effective operation.

More consultation and greater communication will be essential to bringing about greater cohesion within the Department. The Board is aware that Director Youngcourt has devoted substantial time in the past year-and-a-half to meetings where she asked staff about their concerns, answered questions, and discussed her vision for the Department. From the Board's meetings with staff in the course of producing this report, it is evident that the leadership needs to build upon this foundation so that the department can

¹⁴ The Department recently entered into a substantial financial settlement with a former employee as a result of the failure to properly respond to such a request.

¹⁵ Given the importance of the Managing Attorney position within the Department's new structure, the abrupt departure this spring of the former ACAD Managing Attorney created a significant amount of concern within this division. The Board appreciates that the limits on management's ability to discuss this personnel matter have complicated the response to these concerns. However, the Board believes that the Division has attained stability under the leadership of the Interim Managing Attorney and is confident that the newly-selected Managing Attorney will be able to move the Division forward with the full support of the Department's leadership.

¹⁶ It appears that this represents a change from at least some pre-DPD conceptions of the supervisory role and thus will require some adjustment of employee's expectations as and of supervisors.

¹⁷ As the Board understands it, these calls often do not involve criminal law issues. If that is correct, the Department should take steps to ensure that DPD employees are not burdened with such inquiries.

best capture front-line employees' observations and suggestions in a timely way – an essential step in ensuring employees feel heard and promoting continuous improvement in policies and practices.

The Department's ultimate success requires mutual respect. The quality of representation that the Department's clients receive will always flow from the talent, commitment, and performance of the Department's attorneys and staff. The leadership must promote an environment in which those attorneys and staff receive the respect, support, and recognition they are due. At the same time, the Department's leaders, who are equally committed to the highest standards of representation, need to be able to make important and difficult decisions about how the Department will operate without having their motives called into question. The Board recognizes that the significant changes required by the transition from independent agencies to County Department have been challenging and stressful for many. The new Director and leadership team are also in the process of defining and fulfilling their roles. Despite these challenges, the Department has continued to provide effective representation to its clients. The Board believes that with continued effort at team-building and facilitating broad participation in designing the Department's future, King County will enjoy a stable and even stronger public defense program.

ASSIGNED COUNSEL PANEL

The 2015 Annual Report listed the Assigned Counsel Panel as one of the key issues facing departmental leadership. During 2015, Deputy Director Floris Mikkelsen was responsible for reviewing, reforming, and overseeing the Assigned Counsel Program. As of January 1, 2016, Burns Petersen began serving as Assigned Counsel Director. In February 2016, the Department issued its new Assigned Counsel Policy, governing all aspects of the program, from selection, case assignment, insurance, and CLE requirements.¹⁸

The Department is in the process of reconstituting the panel de novo, with all attorneys interested in participating being required to complete a new application.¹⁹ The Assigned Counsel Director will select panel participants via an evaluation that may include observing the attorney in court, soliciting comments from those with knowledge of the attorney's performance, and reviewing documents filed by the attorney. In its selection process, the Department has involved attorneys with expertise in the practice areas from within and outside the Department. To this point, panels have been constituted for the Juvenile and Dependency child representation practice areas. The process of selecting attorneys for felony cases is ongoing as this report is being drafted. The Department has established a goal of creating panels large enough so that, with cases evenly distributed among members of the panel, no attorney would have more cases than would constitute 1/3 of a caseload for an in-house DPD attorney. The Assigned Counsel Director reports that this is roughly in line with the former informal practice. The Board met with a group of attorneys from the panel. They reported that they feel as if their contributions to the County's public defense system are under-appreciated.²⁰ Several of these attorneys dedicate a significant portion of their

¹⁸ The Policy can be found at http://www.kingcounty.gov/~media/courts/OPD/documents/Assigned_Counsel_Policy_effective_2-5-16.ashx?la=en.

¹⁹ The application can be seen at http://www.kingcounty.gov/~media/courts/OPD/documents/Assigned_Counsel_Panel_Application_-_January_2016.ashx?la=en.

²⁰ This includes the lack of outreach by the Advisory Board toward panel members, a critique the Board acknowledges and has committed to redressing going forward.

practice to public defense. Some have worked to organize themselves in order to share information and be kept updated with court policies and procedures so that they are able to provide competent representation at the same level as DPD attorneys who have more institutional support. It appears that the process of reconstituting the panels has opened up lines of communication with Assigned Counsel Director Burns Petersen. For example, panel attorneys have requested access to the JIS and ECR databases. Mr. Petersen is looking into these matters. The Department should incorporate the needs and voices of the panel attorneys more fully into its consideration of policies in the future.

The Department has invited panel attorneys to participate in some of the recent in-house training programs and, over time, plans to develop programming tailored to the needs of panel attorneys as well. The Department plans to establish a process of monitoring the practice of panel attorneys, through observation and other means, but the framework for this is not yet in place. The Board supports these efforts to ensure that all indigent defendants receive quality representation, whether represented by a DPD staff attorney or assigned counsel

ASSIGNED COUNSEL UTILIZATION IN FELONY CASES – 2016

	JANUARY	FEBRUARY	MARCH	APRIL
CAPACITY	11	0	118	10
CONFLICT	30	26	22	46

The table above shows the monthly assignments of felony cases to panel attorneys, broken down by the reason for the assignment. In three of the four months, a large majority of the assignments were due to conflict issues. However, in March, there was a big spike in the number of panel assignments required for capacity reasons. There was not a significant increase in assignments overall in March, so the increased utilization of the panel was necessary due to a shortfall of capacity within the Department.

The Department’s leadership and the panel attorneys agree that it is essential that the rates for compensating panel attorneys,²¹ unchanged over the past 10 years, must be increased. The Board supports this position as well.

²¹ The current rates are: \$70/hour for Class A felonies, \$55/hour for other felonies and \$50/hour for Misdemeanor, Juvenile or Dependency cases.

WORKFORCE

BASIC STAFFING INFORMATION

The Department has 345 employees at the division level, classified as follows:

- Attorneys: 206
- Para-professionals: 84
- Administrative: 55

Approximately 74 percent of the attorneys are white, as are 65 percent of the para-professionals and 57 percent of the administrative employees. Fifty-five percent of the attorneys are women, as are 70 percent of the para-professionals and 71 percent of the administrative employees.

The Director's Office has 38 employees: 47 percent of those employees are white, and 76 percent are women.

Although there is substantial racial diversity among the permanent staff, none of the 21 summer legal interns the Department hired in 2016 are persons of color. The Department has committed itself to performing extensive and effective outreach to achieve greater diversity for next summer. This is especially important, as the internship program is a central component of the Department's long-term hiring strategy.

DEPARTURES, HIRES, AND CONVERSIONS

From January 1, 2015, through April 1, 2016, 53 employees ended their service with the Department. Eighteen of these were TLT employees. Of the 35 regular employees, 18 resigned, five retired, and 12 left for other reasons, including transfer to other King County jobs, medical issues, and termination. During the same period, 34 full-time employees were hired, and 32 TLTs were converted to regular employees.

COLLECTIVE BARGAINING AGREEMENT

In January 2016, the Council approved collective bargaining agreements previously reached between County officials and the Public Defense Management Guild (on behalf of DPD managers and supervisors) and the Service Employees International Union (on behalf of non-supervisory attorneys and other staff within the Department). These were the first agreements between these bargaining units and the County since the Department was established. The agreements' provisions, including pay increases, are retroactive to January 1, 2015. As described in the Staff Report presented to the Council with the proposed agreements:

To achieve parity of compensation between DPD attorneys and PAO attorneys, the proposed new CBAs would create two new classifications: a new, non-supervisory classification, Public Defense Attorney I (PDA I), and a new, supervisory classification Public Defense Attorney – Supervisor (PDA-S), both of which contain sub-classifications and steps that correspond to those of the PAO's Deputy Prosecuting Attorney (DPA) and Senior Deputy Prosecuting Attorney (SDPA) classifications.

The agreements also set out the criteria and process for promotion and provide for COLAs that had not been included in the Department's budget.²²

SENIOR STATUS

The Collective Bargaining Agreement with SEIU requires the Department to designate 35 attorneys as Senior Attorneys. This was designed as a further step toward parity with the Office of the King County Prosecuting Attorney, all of whose supervisors are considered seniors. Consistent with the CBA, Director Youngcourt sent out a call for applicants, which included a reminder of the provisions of the CBA discussing the process and criteria for selection. Felony Area Practice Director Louis Frantz was appointed to chair the committee that would review the applications and determine which applicants would earn senior status and, for those who do, which grade they would be awarded. Cognizant of the anxiety attendant on this first-ever selection process and in consultation with the Advisory Board, Mr. Frantz devised a process that he hoped would be (and be seen as) fair and transparent and communicated it to the employees.

With 69 applicants for only 35 slots, it will be important that the leadership communicate effectively when the results are announced. It should be clear how the decisions were made and also how disappointed applicants – as well as those who did not apply but may do so at some later stage – can work to attain this status.

TRAINING

Last year's report emphasized the importance of developing a department-wide training system and culture.²³ Without specifying a training system design, the report identified six tenets to guide the Department in developing its training program. This report assesses the Department's progress in realizing the six tenets, noting successes and offering recommendations for continued emphasis where appropriate.

1. A training system should blend in-house training with external resources

The Department offered its first Department-wide training event, Creating Harmony, earlier this year. More recently, a number of relatively junior attorneys participated in the Department's week-long Litigation Academy. The Department also offered a training program for new supervisors. In the fall of 2015, the Department also held a multi-day session designed to improve participants' skills in making effective presentations. The latter program was offered as a way of developing the Department's internal capacity for Department-wide and intra-division training. Each of these are promising examples of what a powerful centralized training program can offer.

²² The agreements and related materials are available at <http://aqua.kingcounty.gov/Council/agendas/LJEM/20160112-LJEM-packet.pdf>.

²³ The ABA's Ten Principles for a Public Defense Delivery System, referenced in the ordinance governing the Department, the Washington State Standards for Indigent Defense Services, the WSBA *Performance Guidelines for Criminal Defense Representation* and pertinent provisions of the RCW all require appropriate training as an essential part of an indigent defense system.

Department policy states that any attorney seeking to participate in an external CLE during work hours, as attendee or presenter, must obtain the approval of his/her Managing Attorney and the Training Director. These requirements serve legitimate departmental goals, but delays in responding to requests will naturally cause frustration to applicants and could potentially harm the Department's reputation as a local and national leader and partner in public defense.

2. Training should address all positions within the Department

Paralegals, mitigation specialists, investigators, and administrative staff continue to report inconsistent availability of training opportunities. A key anticipated advantage of the Department's consolidated structure is that it would make the process of training non-attorney staff more efficient. The board urges the Department to continue looking for ways to systematically design and deliver training to its entire staff, as this is essential to providing the highest-quality service to clients.

3. The Department should establish and provide standardized, in-house training tied to key career milestones

- Building a shared institutional identity and a common culture of continuous improvement require that the Department target its training offerings to meet employees' needs across their careers. The Litigation Academy offers a good example of an entry-level offering, with more advanced and practice-specific programs required at further stages.
- The Department should continue to pursue the creation of practice area-specific practice guides, resource banks, and curricula from the combined experiences and knowledge of the four divisions.

4. For training responsibilities left to the divisions, the Department should ensure consistent training across divisions by providing minimum standards

- DPD has not yet created a tailored set of training standards to guide and empower the divisions as they pursue their own training programs. This goal remains important and also provides an important opportunity to consult with employees at all levels of the organization to design a set of standards that reflects input from the entire organization and that the entire organization can support and uphold.
- The Department should ensure that training left to the divisions capitalizes on what the divisions can do that the Department cannot:
 - training in the context of actual, current cases (ethical walls prohibit Department-level input and inter-division interaction in many such cases);
 - informal training in the context of supervision and linked to evaluation; and
 - emphasis on practical skills that complement legal doctrine (local court rules, individual court calendar management and norms, and the ability to manage a caseload).
- Supervising attorneys play a critical role in offering structured training within the context of actual cases, something the Department's training unit cannot do for ethical reasons. It is essential that the Department communicate clearly to Supervising Attorneys that this is part of their job description and equally clearly to supervised attorneys that they should look to their supervisors for this support.

5. *Training should be resourced*

- Allocation of time dedicated for training within workload calculations remains insufficient, particularly for non-attorney staff.
- Reduced caseloads for newly hired attorney and non-attorney staff have been inconsistently enforced, necessarily consuming workload time that would otherwise be available for training. The board acknowledges that these issues are largely attributable to a staffing model that has yet to properly account for the time necessary to train staff—and new staff in particular.

6. *Training should be linked to evaluation.*

- DPD has recently instituted a Department-wide performance evaluation process. This includes a self-assessment to be reviewed by an employee's supervisor and then the Managing Attorney. This provides a foundation for goal-setting for the coming year.
- The Board appreciates that the Department is currently building its evaluation process atop the varied practices (and gaps) in the agencies' processes. Performance evaluation that is not partnered to an ongoing process of coaching and mentoring can create stress without promoting professional growth, and that is especially likely given the broader organizational changes occurring within the Department. It is important that constructive communication during performance evaluations be a means of helping staff members build confidence in their skills as they enhance strengths and overcome weaknesses – and that the formal evaluations be understood as part of the Department's continuous process of coaching, mentoring, and improvement.

INFRASTRUCTURE

OFFICE BUILDINGS AND WORKSPACE

The Department is currently seeking to lease office space in Seattle that can house the four divisions and Department leadership in a single building. The Department has contracted with a broker and an architect. The County has assigned a Project Manager, and the Department may appoint one as well, to help manage the operational changes necessitated by the move. The Board believes that the move into a common building will be a critical step in the formation of a shared Department-wide identity. Proximity will provide increased opportunities for collaboration as well as for informal collegiality. The first phase, involving the Director's office and ACAD, is to occur in 2016, the remainder in 2017. The Board understands that a move of such scale will require time and support by the County and Department personnel to ensure it is done effectively.

The Department has signed a Letter of Intent for additional space in Kent. The existing space has been reconfigured to accommodate some attorneys from NDD, thus enabling the Department to keep more cases in-house while also distributing the workload more evenly across the divisions.

The working conditions at ITA Court are woefully inadequate. There is not sufficient office space, nor appropriate infrastructure, such as functioning, easily accessible printers. Plans have been developed to remodel Harborview Hall to provide greater and more efficient working space for the ITA Court and the attorneys working there. This needs to be treated as a matter of the highest priority. Even assuming such improvements are made, the working conditions for employees handling the ITA calendars will remain difficult. With the increased reliance on video hearings, attorneys spend a great deal of time driving to clients' locations, rather than being able to station themselves at the court's centralized location.

TECHNOLOGY

Unified Case Management System

It is essential that the Department have a fully functional case management system that is easy for frontline staff to use yet powerful enough to enable leadership to manage caseloads, analyze the Department's effectiveness, suggest policy initiatives,²⁴ and support an ethically and fiscally sound staffing model. Unfortunately, at the time it was rolled out, the Department's system, Legal Files, was not ready to meet the needs of frontline staff, division supervisors, or Department leadership. In the early spring of 2016, KCIT dedicated significant resources, including a full-time business analyst and some of the time and expertise of its app developers, to assist the Department in developing Legal Files so that it will meet the aforementioned objectives. The Board is pleased to see this deployment of needed resources, however belated. However, the technical experts cannot bring the system to the necessary level of functionality without the guidance of someone who understands the Department's demands both at the Division and Central Administration levels. The requirement for ethical walls further inhibits the Department's ability to efficiently address these issues. The recent addition of a business analyst who has legal experience and does not work within the Director's Office has improved the Department's ability to

²⁴ For example, it would be useful if the Department were able to identify patterns of client needs, by demographic, neighborhood, or other characteristics.

analyze issues. It will be critical to quickly determine whether this analyst's knowledge and expertise regarding the operations of the Department are sufficient to fully and efficiently meet the Department's needs, and, if not, it may be necessary to hire a consultant who can help advance this vital process.

Due to the problems upon rollout, the Department will likely need to do a good deal of work in communication and training to develop employee confidence in the system as it improves. The Department has continued to use the HOMER system for case assignments and other matters. It is hoped that as Legal Files becomes more fully functional, the Department will be able to retire HOMER as redundant, freeing up resources for other technology needs.

Laptops

Every attorney now has a laptop. At its meetings with DPD staff, the Board heard numerous comments to the effect that this has been extremely beneficial in enabling employees to work on cases while waiting at the courthouse.²⁵

Cell Phones and Phone System

The Board heard repeated calls for the issuance of County cell phones to attorneys. It is understandable that attorneys do not want to share their personal phone numbers with witnesses, their clients, and others, and, given the importance of communication with clients and witnesses, it would be very valuable to have dedicated cell phone access. The Department's leadership has been exploring a number of avenues for overcoming the fiscal hurdles to accomplishing this important goal. Already, attorneys working in the ITA Court have received County cell phones.

At its meetings with DPD staff, the Board heard complaints about the telephone system. The specific complaints varied, but, in sum, the concern was that, in some locations, if one experienced a computer failure, one lost the use of a landline because the phone and computer are linked. There was also a complaint about the phone interface for clients. Apparently, even when they enter the information to connect to their attorney, clients face a lengthy (i.e., more than 1-minute-long) wait before actually being connected. Some clients hang up, believing they have been disconnected.

E-Service

The Department is prepared to participate in e-service. Conversations with representatives of Superior Court and the Prosecuting Attorney's Office have produced a protocol that will ensure that all incoming pleadings are promptly entered into the client's file and brought to the attention of the attorney on the case.

A-V Equipment

The Department has obtained audio-visual courtroom presentation technology, with one unit in Kent and another in Seattle. This is a significant step forward and responds to a concern raised in the Board's 2015 Report.

²⁵ In the 2015 Report, the Board noted problems with wi-fi access at the Seattle Superior Court building. That does not appear to be a problem at this time. The Board is not aware of problems at other courthouses.

Investigative Technology

The Department appears not to have fully developed its technological capacity to support investigation and fact-gathering. The Department should consult with its attorneys and investigators to develop a plan for improving its capacity in this area.

EQUITY AND SOCIAL JUSTICE

The work of the Department intersects with a wide range of equity and social justice concerns. In this section of the report, the Board highlights a few of the most pressing such issues at the moment.

ADVOCACY ON BEHALF OF MENTALLY ILL DEFENDANTS

In the 2015 Annual Report, the Board identified the continuing problems of mentally ill defendants being housed for too long in custodial facilities while awaiting competency and/or treatment. Over the past year, the Legislature and the U.S. District Court have taken action on these issues, and DPD continues to work with other interested parties to ensure that adequate facilities, budgeting, and staffing exist and the challenged practices are eliminated. DPD expects that, ultimately, the timely completion of competency evaluations, along with adequate staffing at evaluation and treatment facilities, should reduce the costs to the County of prolonged and unnecessary pretrial detention. DPD is actively working to achieve these savings as well as justice for its clients.

JUVENILE JUSTICE SYSTEM

In last year's report, the Board noted that amid the ongoing public discussion over the new Children and Family Justice Center (CFJC), leaders in the judiciary committed to increased dialogue and collaboration with community members who had voiced concerns about the CFJC's detention capacity and about the broader issue of racial disparity within the juvenile justice system. Plans have been revised so that the current detention capacity for the new building is 112 beds (compared to 212 at the current facility). This reduction has allowed for the dedication of increased space for non-detention programming. The current center's average daily population (ADP) last exceeded 112 in 2002, when it was 118. The ADP has not reached 90 since 2008, and in 2013 was 58. Opposition by community members to the detention facility continued during the permitting process for the new juvenile courthouse and detention center. In addition, a lawsuit has been filed by a community organization challenging the levy that funds the construction of the building. DPD has participated in the newly created Juvenile Justice Equity Steering Committee, a coalition of stakeholders tasked with making recommendations for reducing racial disproportionality in the juvenile justice system.

On March 31, 2015, the County Council announced additional funding of \$4 million for youth programs, including funds for a holistic approach for providing defense resources to youth and their families in the juvenile justice system. To date, these funds have not been made available for programming to begin. Court leaders also announced a commitment to reducing the use of secure detention, including reducing the use of detention for probation violations by one half within one year. The is seeking to determine whether this goal was met

At the prompting of TDAD Juvenile Supervising Attorney Katherine Hurley, the Court has adopted an enhanced two-tier warrant system, pursuant to which officers who arrest youth on Tier Two warrants can contact the court's Screening Unit and obtain a new court date for the youth, thereby obviating the need for detention.

Even as the total number of youth and the total number of youth in any racial or ethnic group within the detention population have declined, the proportion of black youth in the detention population has

increased. In 2015, racial disproportionality for African American youth in the juvenile justice system increased significantly. Every youth declined to the adult system in King County in 2015 was black or brown. African American youth were 14 times more likely to have a juvenile offense filing and 20 times more likely to receive a sentence of secure detention than white youth, up significantly from 2013 data cited in last year's report. Leaders from the court, DPD, the Office of the King County Prosecuting Attorney, and the community continue to examine ways to combat this problem.

EFFORTS TO ENHANCE THE RACIAL DIVERSITY OF JURIES IN KING COUNTY

Over a long period of time, King County public defenders have confronted what they believe to be systemic under-representation of racial and ethnic minority groups in juries and jury pools. As a result of the advocacy of DPD attorneys, the King County Superior Court authorized the distribution of a Jury Representation Survey to all potential jurors who answered their summonses at the Seattle and Kent courthouses over a period of 20 dates from January to April 2015. The defense enlisted the services of Professor Katherine Beckett, Ph.D., from the Sociology Department at the University of Washington to examine the data produced by the survey. As set out in a Motion for a Jury Drawn from a Fair Cross-section of the Community, Professor Beckett concluded, "Jurors identifying as African-American or Black, American Indian or Alaskan Native, Asian, Pacific Islander, or multi-racial were under-represented in the jury pools when compared with their representation in the jury-eligible population." The motion asserted that this under-representation is starker in the Seattle courthouse, as jurors from the County's more diverse southern half are summoned to jury service in Kent. The motion suggested a number of measures the court could take to increase the numbers of potential jurors from under-represented minority groups. The motion was denied,²⁶ but the Department's attorneys will continue to address this issue as they see fit.

BAIL REFORM

On June 4, 2016, *The Seattle Times* published a commentary by DPD Director Lorinda Youngcourt headlined, "Pleading guilty for lack of money," highlighting the significant problem that bail poses for indigent defendants.

Leaders in both Seattle and King County take pride in their commitment to social justice. Yet even here, in one of the most politically progressive corners of the country, those of us who work in public defense bear witness to a system that sometimes puts people behind bars simply because they are poor.

The commentary highlights a 2015 report documenting the significant number of misdemeanor defendants in Seattle Municipal Court who do not post bail and are thus held in the King County Jail until their case is resolved. Many defendants plead guilty to get out of jail and risk losing their housing, jobs, and children as a result of their convictions.

²⁶ In her ruling, Superior Court Judge Mariane Spearman acknowledged "we have all observed that jury pools, especially at the Seattle courthouse, lack diversity." However, the court ultimately concluded that "[i]f we consider that only 5.6% of eligible jurors in King County are Black, the lack of black jurors in jury pools is certainly unfortunate but not necessarily unexpected or unreasonable."

In May 2016, the Washington Supreme Court held a Symposium “Pre-Trial Justice: Reducing the Rate of Incarceration.” DPD Misdemeanor Manager Twyla Carter presented at the symposium and brought former DPD clients to explain to the Court how pre-trial detention significantly impacted their lives.

Unfortunately, data for District and Superior Courts is not available. The County should collect data on who is in jail because they are unable to post bail and should work toward reducing or eliminating the use of cash bail so that individuals do not suffer the negative consequences of pre-trial incarceration due to their indigence.

RECOMMENDATIONS

The Board offers the following recommendations which we believe are important to improving representation to DPD clients and furthering the equity and social justice mission of the Department.

Within the current calendar year, the Department must ensure that the Legal Files case management system is capable of meeting the Department's internal and external need for reliable data and efficient case management. If the system is not adequate, it should be promptly replaced.

The Department must ensure that the County's budget model for the Department properly accounts for all factors necessary to ensure the Department's ability to manage caseloads effectively.

Department leadership needs to enhance the processes of consultation and communication with DPD employees in the development, implementation, and assessment of new policies and procedures. This includes clear communication to all employees about the roles and responsibilities of all levels of leadership. In addition, the Department should incorporate leadership training, team-building, and avenues for all employees to feel engaged in designing the Department's future.

The Department must continue to grow into an organization in which all employees identify with the Department as a whole and engage constructively in supporting not only their divisions but other divisions and Department leadership, as well.

The Department needs to continue to develop Department-level training, for all employees, and to communicate a clear plan for effective division-level training.

The Department should take all steps necessary to ensure that it has the resources to provide adequate investigation services. This includes appropriate monitoring of caseloads for investigators; providing them with sufficient support and training; enhancing the Department's technological resources for investigation, and addressing systemic practices outside the Department that unnecessarily increase the demands on investigators' time.

The Department should work with the members of the Assigned Counsel panel to ensure they receive appropriate support and feel that the Department values their contributions to the County's system of public defense. The Department should also advocate for a rate increase for Assigned Counsel work.

The Department should ensure that the results of the process of designating senior attorneys are communicated transparently, so that all employees, including the disappointed applicants, understand how the decisions were made.