2019 ANNUAL REPORT

KING COUNTY DEPARTMENT OF PUBLIC DEFENSE

Submitted to the Metropolitan King County Council | May 1, 2019

"Inside/Out," by Jazmine and Kardea, Creative Justice Youth Board Members, with mentor artist Delton Mosby

On the cover:

“Inside/Out” was created by Jazmine, then 18, and Kardea, then 16, with support from mentor artist Delton Mosby, in March 2018 for an exhibit at the Seattle Public Library called “Someday We’ll All Be Free.” Jazmine and Kardea were participants in Creative Justice, a program that provides arts-based alternatives to youth incarceration, and now serve on the organization’s Youth Board. For more information about Creative Justice, visit www.creativejustice.4culture.org.

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A Note from Director Anita Khandelwal

The Department of Public Defense has undergone a significant transition over the past eight months. During this period, we've begun the work of strengthening the community within DPD and DPD's role in the community at large. First and foremost, we are focused on our commitment to provide high-quality representation to our clients. Over the next year, I will also focus on three key issues: supporting ongoing efforts to make DPD a healthier and more sustainable place to work; partnering with our community allies to push for divestment from the criminal legal system; and strategically challenging those practices, criminal and civil, that harm our clients.

I have heard from all corners of this department that unbearable workloads undermine high-quality representation and a healthier workplace. Public defense has many long-standing problems stemming from the combination of high workloads, secondary trauma, and a lack of any meaningful control over our cases (when cases will be filed, how many cases will be filed, or how or when they will be resolved).

We are working hard to improve. I have, with the help of the management team, created an ambitious four-year strategic plan to move us forward. Because this plan belongs to all of us, members of my management team and I have traveled to dozens of unit meetings and staff gatherings over the past three months, enabling nearly every employee to share their vision for the department and to have input on our strategic plan.

In areas within my control, I have tried to make some immediate changes. While confined by our budget and staffing model, I have worked with the management teams in the divisions and the Director's Office to continue to seek solutions. We created a supplemental credit policy that encourages consistency in the use of supplemental credits and incorporates an expectation that such credits will be a regular part of caseloads. I'm working with staff in the Director's Office and in King County's Office of Performance, Strategy, and Budget to adjust data used in our staffing model.

We have also made significant improvements to our training program by increasing access to relevant, high-quality training.

I strive for greater transparency and collaboration. I have held office hours to meet with individuals within our department, and I send regular email updates about events and developments that affect us as a department. I've made data more readily available, regularly sharing with the divisions their supplemental credit and investigator use so that they can see how they're doing and how the department as a whole is doing. We have held practice area meetings when more specialized issues arise, and we convene regular meetings with division supervisors. We share a workplace only so long as we share our experiences with each other.

We've also strengthened our partnerships with community allies who want to see an end to a system that harms people, that is racist, and that takes precious resources out of the

communities best able to support the people we represent. As described in this report, this commitment informs and shapes our policy work in several arenas: family defense, juvenile representation, pre-trial reform, legislative advocacy, and more. Our community allies' priorities have steered DPD in some new directions – partnering, for instance, with those who oppose the new youth jail and a coalition that wants the City of Seattle to divest from court-based services and put those funds into community-based programs and organizations. The department's voice contributes to public debate in our community. I've been interviewed by radio and newspaper reporters about pending legislation and policy reform, and I've worked with the management team to pen op-eds and to issue public statements, news releases, and social media posts.

All of these initiatives support our singular mission: a commitment to provide high-quality representation to our clients and to advocate for their objectives, their interests, and their dignity. That is the power and meaning of public defense.

This report provides a snapshot of our department, a look at both the challenges and rewards of this important work largely through the lens of an executive and her management team. But on nearly every page of this report are also the perspectives of some of the people who work at DPD, employees who experience first-hand the issues the report highlights and know full well both the challenges and rewards of public defense.

I'm deeply inspired by the people who have chosen to work in public defense, by their commitment and passion, and by their routine excellence. I look forward to our shared work in the years ahead.

Anita Khandelwal
Director, Department of Public Defense

An Overview of the Department

The Department of Public Defense provides high-quality legal representation to people in King County who are charged with a crime or face a loss of liberty and who cannot afford an attorney. Among those we serve are:

- people who have been charged with a crime;
- people who could lose their children;
- people who face involuntary commitment to a mental health or substance abuse facility;
- people seeking post-conviction relief from a felony or misdemeanor conviction;
- youth who have been charged with an offense or are facing other proceedings;
- people who face contempt of court for failure to pay child support, and
- people who face civil commitment as sexually violent predators (RCW 71.09).

DPD represents clients in King County Superior and District Courts and, by way of a contract with the City of Seattle, in Seattle Municipal Court. In 2018, the department's attorneys represented 15,313 individuals and handled approximately 19,444 different assignments (including, but not limited to criminal cases, probation reviews, and post-conviction relief) in King County courts. In Seattle Municipal Court, DPD handled 6,831 filings in 2018. DPD's civil commitment practice, meanwhile, has experienced a significant increase in assignments: In 2018, there were 4,635 assignments in the county's ITA (Involuntary Treatment Act) Court, an increase of nearly 20 percent since 2015.

Staffing and Structure

Key to the DPD's strength as a department is its staff – a workforce of 415 people who either directly or indirectly support DPD's 20,000 clients. The department employs attorneys, investigators, mitigation specialists, paralegals, legal administrative specialists, fiscal and data specialists, case coordinators, human resources specialists, and more – all of whom form the backbone of the department. Attorneys comprise about half of DPD's staff.

Client representation is provided by four divisions, operating as separate law firms so that, consistent with our ethical walls policy, DPD can keep as many cases in-house as possible.[1] The four divisions, reflecting their history as nonprofits before becoming a part of the county in 2013, are called:

- Associated Counsel for the Accused Division (ACAD)
- Northwest Defenders Division (NDD)
- Society of Counsel Representing Accused Persons Division (SCRAPD)
- The Defender Association Division (TDAD)

The Director's Office provides strategic and policy direction for the department, runs the department's training program, and provides budgetary oversight, human resources support,

[1] Under the Rules of Professional Conduct, clients cannot be represented in-house if it is determined that there's a conflict of interest, meaning that the client, a co-defendant, or a witness in a case has had a prior representation by a DPD attorney. By having four separate divisions, each siloed from the other, the chances for such a conflict are slimmer and the department is able to keep more cases in-house.

communications support, and administrative support. Staff in the Director's Office also interview clients to determine eligibility, assign cases to the divisions, and manage case assignments.

Director Anita Khandelwal works closely with a seven-member management team, as well as the human resources manager, the communications manager, and other administrative staff in managing the department and providing strategic oversight.

Anita became the interim director of the department in July 2018, was appointed to a four-year term as the permanent director by the Executive on Oct. 4, 2018, and was confirmed by the Metropolitan King County Council on Nov. 5, 2018. Several members of her management team, as a result, are interim directors. The department completed its first strategic plan this month, a four-year road map for DPD (see Appendix 2). With that plan in place, Anita will begin working with her Human Resources staff to conduct a search for permanent directors and put in place a permanent management structure.

Assigned Counsel

A panel of assigned counsel – qualified private attorneys – provides representation when none of the divisions can do so due to a conflict or when DPD's own attorneys are at caseload capacity. DPD currently has 81 attorneys on its assigned counsel panel and expects to add another five to 10 this year.

Because of DPD's structure, the department assigns far fewer clients to outside counsel than other large public defense agencies. In 2018, DPD assigned 10 percent of its cases to outside counsel, a number that has stayed virtually constant year over year. According to the National Association of Public Defense, most other agencies send between 20 and 60 percent of their cases to contract lawyers. The state of North Carolina, for instance, sends 32 percent of its cases to assigned counsel, and Pima County, Arizona, sends 20 percent after a period of sustained effort to reduce its assigned counsel numbers.

Due in large part to advocacy from the Public Defense Advisory Board, DPD was able to increase the hourly rate for attorneys in nearly every practice area in 2019. This rate

MARCI COMEAU ● ATTORNEY ● NDD

I find it rewarding when I am able to use my advocacy to demonstrate to the government that my clients are the experts on their own families. During a time when there is a growing understanding of the harm caused by removing children from the care of their parents, it is rewarding to help parents have a voice against CPS in a court system that often gives the benefit of the doubt to social workers rather than the families they serve. The most challenging part is not taking the emotion of the work home, whether I am handling bail arguments or representing a parent in a termination trial. The consequences of adverse rulings can be enormous for my clients – the loss of jobs, homes, or the permanent loss of their children – and even after doing this work for more than a decade, I have still not mastered the ability to leave work at work.

increase has already had a positive impact: DPD has seen an increase in both the number of attorneys who want to be on DPD's assigned counsel panels and in the overall quality of these applicants.

Public Defense Advisory Board

An 11-member Public Defense Advisory Board (PDAB), established by County Ordinance 17678 and codified as part of King County Code §2.60, reviews DPD's activities, advocates for high-quality public defense, and advises the Executive and the County Council on matters of equity and social justice related to public defense. The board meets several times a year. It is currently chaired by Paul Holland, associate dean for academic affairs at the Seattle University School of Law, and co-chaired by Kim Ambrose, a senior lecturer and director of Tools for Social Change: Race and Justice Clinic at the of University Washington School of Law.

Public Defense Advisory Board Members

Paul Holland, chair
Kim Ambrose, vice-chair
Matt Adams
Safia Ahmed
Judge Sharon Armstrong (ret)
Marc Boman
Sophia McSherry Byrd
Adam Chromy
Louis Frantz
Jeffery Robinson
John Strait

The board issues two written reports a year, one reviewing the Executive's proposed budget for public defense and the other on the state of public defense in King County. Visit this page for PDAB's 2018 budget report and this page for its 2018 annual report. The 2018 annual report fully and accurately covered DPD's compliance with the American Bar Association's *Ten Principles of a Public Defense Delivery System*. See Appendix 1 for its assessment.

PDAB also plays a key role in the selection of the public defender when the office is vacant, according to KCC §2.60.026D, a duty it was called on to perform in 2018, after Lorinda Youngcourt, the previous head of DPD, resigned shortly before the completion of her four-year term. Following the timeline and process laid out in code, PDAB worked with the King County Human Resources Department to undertake a national search for a new department leader. The board also surveyed employees and held two staff meetings to help determine the qualities staff wanted to see in the next public defender and designed an interview process that included involvement by the unions and staff. On Oct. 3, 2018, in compliance with the code, PDAB submitted three unranked names to the Executive for consideration. The next day, the Executive announced the appointment of Interim Director Anita Khandelwal as the permanent director; the King County Council overwhelmingly confirmed her appointment on Nov. 5, 2018.[2]

King County Auditor's Performance Audit of DPD

The King County Auditor's Office released a performance audit of the Department of Public Defense on Oct. 15, 2018, the first audit since DPD's creation in 2013. Titled "Public Defense: Weak Governance Hinders Improvement," the audit covered the period from 2013 to mid-2018 and identified a number of issues that the department was already addressing, such as the need for a more comprehensive training program. (See "Training program," page 7.) It also highlighted several additional opportunities to strengthen the department:

[2] For more information about the role PDAB played in the selection of a new public defender, see the Public Defense Advisory Board 2018 Annual Report.

- The audit faulted DPD for failing to identify its goals and measuring whether the department has achieved them. The audit flags DPD's inconsistent use of supplemental credits across and within divisions, an area attorneys and supervisors have long identified as a concern.
- The audit expressed concern about the poor quality of DPD's data.
- The audit suggests that different case approaches result in different outcomes for clients.

DPD has already responded to the audit in several substantive ways, initiating a number of actions and strategies that DPD management believes will go far towards addressing issues the audit raised.

- In November 2018, DPD launched a strategic planning effort, involving staff in the process while also working quickly and aggressively to get a plan in place. The plan, nearly finalized (and attached as Appendix 2), lays out a road map for establishing guidelines across all the case areas and divisions that will enable DPD to allow for measurement and comparison in legal practices.
- DPD is working with its staff to address the inconsistent use of supplemental credits. (See "Caseload and staffing," page 10.)
- DPD is working to develop a new case management system that will ensure higher quality data.

For the most part, the issues flagged by the auditor are very much about the nuts and bolts of running an office well, the administrative workings of a complex agency. At the same time, the report presented opportunities for management, staff, and labor to discuss best practices and explore whether DPD is, in fact, following those practices. Doing this work will result in better and more consistent high-quality representation for DPD's clients, a goal shared by all staff.

MATT SANDERS ● ATTORNEY ● ACAD

I have experienced the most rewarding feeling there is in public defense. Attorney Deborah Wilson and I prepared nonstop for a murder trial involving an innocent client. Our client was the father of two young boys and came from a good family. The evidence established innocence. After an eight-week jury trial, the jury returned a unanimous verdict of not guilty after less than one day of deliberations. Our client was released after spending almost 900 days in custody for a crime he did not commit. The following week, we all got together and celebrated! The biggest challenge is trying to serve my other clients while in trial on a different case. For example, the murder trial was eight weeks. I was essentially burning the candle from both ends trying to prepare for each day of trial while also serving my other clients. At times, it seemed impossible.

Staff Development: Supporting a Skilled Workforce

A skilled and committed workforce is essential to high-quality public defense. In the past eight months, the management team has brought considerable focus to this issue, strengthening DPD's training program, improving internal communications, working with our human resources staff to find ways to better support an overworked staff, and undertaking the hard work of addressing caseloads and the staffing model. DPD is also working to strengthen recruitment efforts and improve its internship program. What follows is a brief exploration of some of these key issues.

SAMANTHA JACKSON ● INVESTIGATOR ● NDD

It has been rewarding to see how my efforts as an investigator, such as conducting interviews or obtaining surveillance footage, have helped our clients get charges reduced or dismissed. I took a leap of faith in leaving my previous place of employment to come to public defense, and I have zero regrets about my decision. That, in and of itself, is rewarding. On the other hand, I'm exposed to troubling photos and considerable trauma (client history, crime scene photos, videos, etc.) on a daily basis, and I continue to recognize the need and importance of practicing self-care.

Training Program

DPD has a newly revamped training program. In 2017, there were 36 trainings, many of them all-day or multi-day events and/or out-of-state events, making them difficult for staff to attend and often not relevant to the day-to-day work of public defense in King County. From July to December 2018, more than 60 trainings were held; and in the first three months of 2019, 50 trainings have been offered. The trainings cover topics highly relevant to DPD's practicing attorneys, such as litigating speedy trials, effectively working with young adults, litigating competency post-*Hand*, and recent changes in DUI law. Many are led by DPD's own staff and are often held over the lunch hour. Some have been geared to non-attorneys, while other trainings have been applicable to people in several different job classifications.

This new approach, as well as the increase in the number of trainings, reflects DPD's philosophy that the department should offer trainings that are responsive to the issues facing staff and held at times and in formats that allow DPD's busy employees the best opportunity to attend. By generating trainings in-house, DPD is able to identify best practices, showcase the work of our own staff, and share good ideas across divisions and practice areas. And by carefully curating a list of available external trainings, DPD is helping staff identify interesting opportunities, explore innovative practices by practitioners external to DPD, and bring those practices back to the department.

In response to concerns about DPD's annual conference, which had been scheduled as a mandatory, two-day event in September 2018, the training was made shorter and non-mandatory; nevertheless, about half the department attended, and those who attended appreciated being given

the option. DPD, working with the two labor unions, has also brought in workshops that address issues of secondary trauma and have held discussions with staff to develop trainings relevant to non-attorneys. In response to requests that came out of an administrative staff conference, for instance, the department offered Public Defense 101, an introduction to public defense for people who do not practice law; and in response to requests from paralegals, the department offered a course in Westlaw for paralegals.

The department also developed a new attorney training program in 2018, a five-day intensive course led by Ben Goldsmith, TDAD's felony supervisor, and Colette Tvedt, indigent defense and reform director for the National Association of Criminal Defense Lawyers, with support from several other practicing attorneys at DPD and in partnership with the Washington Defender Association. The five-day program focused on the nuts and bolts of trial practice: the rules of evidence, witness interviewing and investigation, cause-based voir dire, opening, cross, direct of experts and clients, closing, sentencing, professional development, client communication, and issues related to juvenile justice. About 30 people attended, including new attorneys in other public defense agencies from around the state.

The Director's Office recently hired a training coordinator, Raymond Delos Reyes, who has been tasked with continuing the pace and quality of trainings and ensuring their relevance to staff at all levels of the organization. Based on the results of a staff survey, the Director's Office also plans to hold a one-day, non-mandatory conference this fall.

LESSY VALDOVINOS ● PARALEGAL ● SCRAPD

I work with people who know how to navigate the system, how to get bail reduced or eliminated, how to make the process work better for the client. It's inspiring to be part of a team so committed to our clients and so passionate about building the most successful defense possible. But it has been challenging to figure out how to streamline a complex caseload and efficiently assist the defense team. Every case is different, so each one takes a different strategy. I'm still quite new in this role, and I'm still learning how to be as efficient and effective as possible.

Staff Recruitment and Diversity

The department is committed to strong local and national recruitment and to strong diversity recruitment. Our staff is currently 60 percent male and 40 percent female; 64 percent of the staff is white, 8.7 percent is Black, 7.5 percent is Hispanic, and 7 percent is Asian. (See Fig. 1.) As is true of many County departments, diversity is concentrated in the lower pay ranges, and DPD is making a concerted effort to make sure its applicant pool for more highly paid jobs is diverse.

In an effort to strengthen recruitment, the department has developed recruitment materials that speak to the importance of public defense as a career for those who are committed to social justice; has developed a webpage in support of the effort, and has begun attending job fairs that the department believes will result in strategic outreach. DPD has also begun building relationships with law professors who are committed to public interest law and to supporting students from diverse backgrounds.

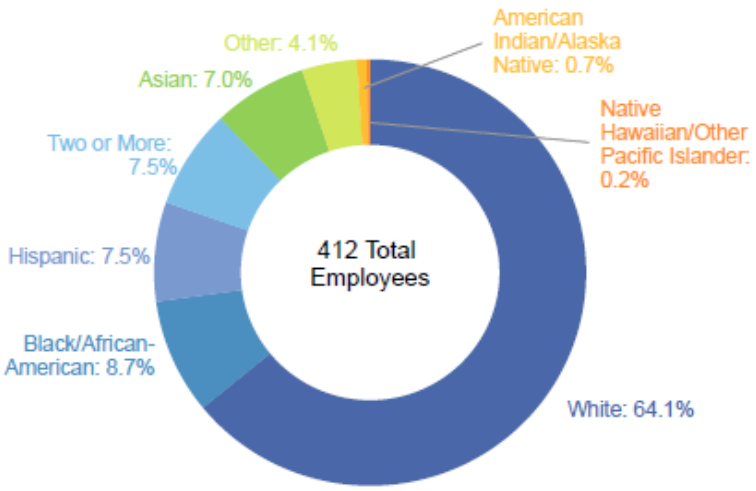

Fig. 1

Interns at DPD

DPD's internship program complements its recruitment program, since the department often recruits new employees from the ranks of its interns.

The department offers full-time summer internships to law students who have completed their second year of law school, recruiting students with a demonstrated commitment to social justice and advocacy on behalf of indigent persons. In return, students receive courtroom experience, excellent training, and mentoring by skilled public defenders.

The department has made improvements to its intern program. Starting this summer, interns will be paid, a first for DPD. The department is also beginning its recruitment earlier in the academic year and is restructuring its program to ensure interns have consistent and high-quality mentoring and training.

These efforts are already making a difference. The department has accepted 21 interns for its summer 2019 program, 28 percent of whom identify as people of color. Further, many of the attorneys the department has hired as part of its 3L Attorney Class Hiring Program (attorneys hired in their third year of law school who join the department upon graduation and as soon as a position opens) are diverse applicants. (See Fig. 2.)

DPD also hosts social work students who have practicum requirements as part of their curriculum, a program that enables DPD's mitigation specialists to mentor the next generation of social workers and to share the public defense perspective with young people committed to social work careers. Because of the importance of the mentor/mentee relationship, DPD has decentralized the process of selecting practicum students to allow mitigation specialists more flexibility in selecting students for themselves based on their availability and needs.

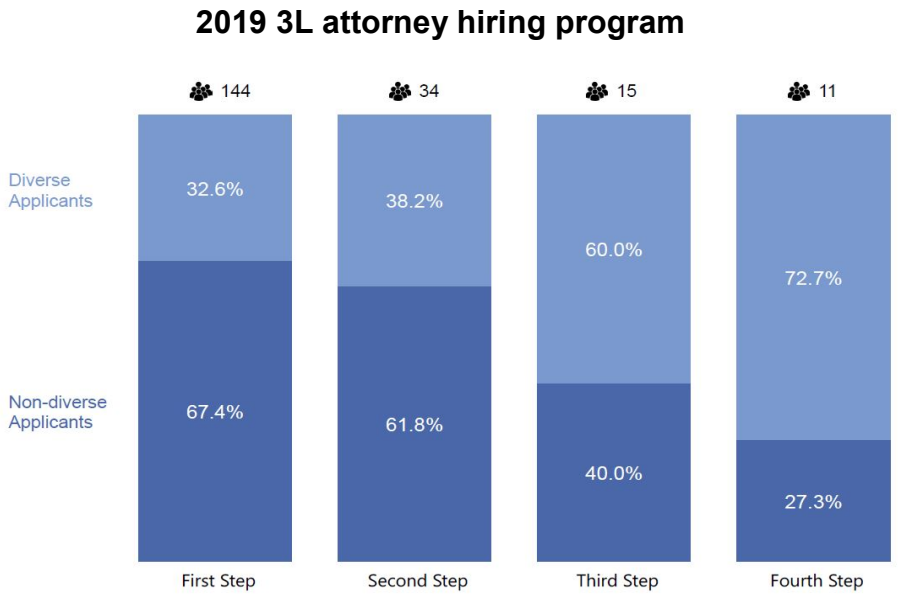

Fig. 2

Caseloads and Staffing

Caseload maximums in Washington arise out of the 1973 National Advisory Commission on Criminal Justice Standards and Goals, which put forward an annual maximum of 150 felony cases or 400 misdemeanor cases.[3] Ten years earlier, in 1963, the U.S. Supreme Court decided *Gideon v. Wainwright,* which established the right to counsel for indigent defendants facing jail time. The limits contained in Washington's caseload maximums, therefore, hinge on 46-year-old practice standards established when the concept of public defense had been in existence a mere decade – standards that, not surprisingly, fail to take into account changes in investigative and mitigation standards, forensic science, legal complexity, and an increasingly punitive criminal legal system. What's more, these caseload maximums were workload targets – not a ceiling, but a floor.

The 1973 standards were also premised on the notion that an attorney would have a mix of cases, some less time-consuming than others. As prosecutorial practices have changed, however, some of those less time-consuming cases are, appropriately, no longer prosecuted, leaving attorneys with caseloads made up of harder and more complex cases. This is particularly true for misdemeanor caseloads. In King County District Court, for instance, the number of DUI cases has grown considerably; DUI cases are often more complex and time-consuming than other misdemeanor cases. (See Fig. 3.)

King County has established a staffing model for DPD that determines the number of attorneys, paralegals, investigators, and legal administrative specialists the department can hire – a model

[3] The commission set standards for other practice areas, including juvenile and civil commitment, but DPD has chosen to focus on felony and misdemeanor caseload numbers because of the impact they have on DPD's staffing model.

effectively premised on the 46-year-old caseload maximums. The county has tried to address this issue by translating case numbers into case credits and providing for additional felony case credits for the time required to provide the exceptional representation the county expects of DPD and that its clients deserve. That has helped to mitigate the situation, and the department is currently working to make sure that the hours an attorney works are accurately captured and converted to credits. The supplemental credit system, however, still fails to accurately address workloads that are often way too heavy. A meaningful staffing model premised on current practices is key to both employee well-being and quality representation.

King County District Court case mix, showing a dramatic increase in DUI cases

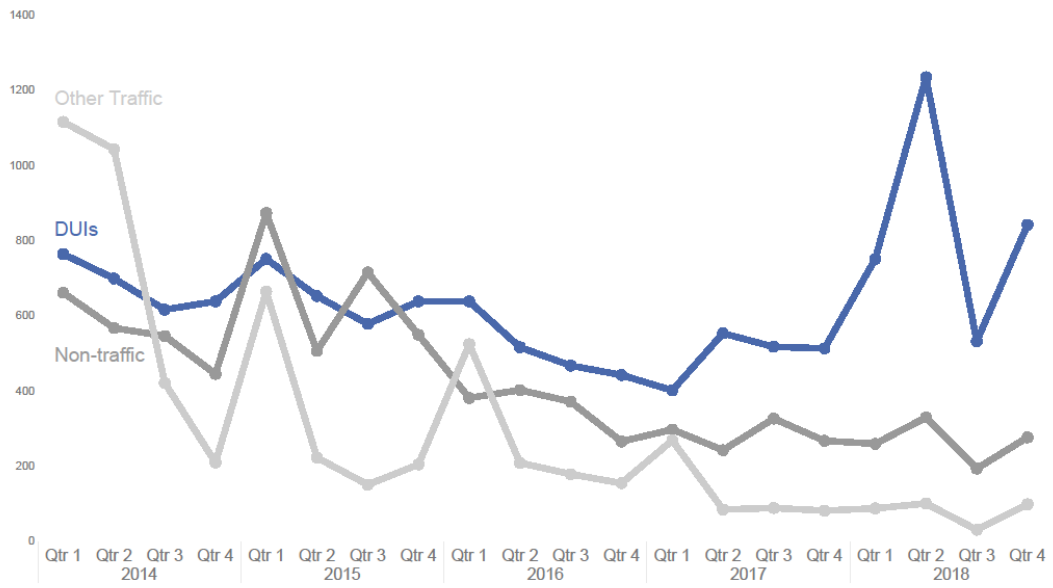

Fig. 3

JOSH ANDREWS ● SUPERVISING ATTORNEY ● NDD

Over the course of the last several months, I've transitioned from being a caseload attorney in the felony unit to supervising the Seattle Municipal Court unit. Mentoring up-and-coming attorneys through the early stages of their practice is the most rewarding aspect of supervision work. I work with attorneys very closely on their trial preparation. In breaking down every step of the trial process and discussing the law and tactics at play in each stage, I get to observe exponential growth from one trial to the next and even acquire new ideas and perspectives that inform my own practice. At the same time, it has been challenging to remove myself from direct representation and to take a more behind-the-scenes role in helping our clients. Rather than take the wheel as I have for the last eight years of my career, I've had to learn to trust the attorneys I work with to help our clients and execute the plans we make for their benefit. Then again, it is that much more satisfying when, far more often than not, that trust is rewarded.

Policy Work:
Fighting for Fairness and Compassion

DPD's mission is not only to provide high-quality representation but to also challenge the practices and policies that keep DPD's clients entangled in a harsh and unfair system. DPD's goal is to work to dismantle the systems that oppress our clients. Where traditional systems remain, DPD is partnering with the community, litigating, and drawing upon the expertise of its staff to make those systems less harmful and more restorative.

To that end, DPD is working on a number of issues, sometimes effecting change, sometimes making incremental progress, and sometimes engaged in processes where the outcomes are still uncertain. The department is working with community-based partners on many of these efforts. The department has also actively engaged in media relations and other forms of outreach as a way to bring more attention to the issues and to effect change.

Below are highlights, looking at areas where DPD employees have used their skills as litigators, partnered with the community, sought legislative changes, or engaged the media to create a fairer system for our clients.

ROOPALI DHINGRA ● MITIGATION SPECIALIST ● ACAD

I have been extremely lucky to be working with a team of lawyers who are responsive, caring and have a great view of a social work practice. We have had some awesome results because of the holistic team. I am grateful for my clients who trusted in our work and gave us the time we needed to find the best possible solutions. But there are many aspects to working in a felony rotation that are challenging. Losing clients to suicide has been the hardest for me. I was devastated when I learned of the loss of my two young clients. However, my felony team and all of ACA were very supportive and gathered around not only me but others who have suffered the loss of a client.

Litigation: Using our skills to lessen the harm of system-involvement

As a law firm, DPD frequently uses litigation to fight systemic issues that harm our clients. DPD's lawyers file representative writs, appeals, motions for discretionary review, and other relevant litigation. The Director's Office supports DPD's attorneys with model briefs and trainings to effect change in the criminal court system.

The due process rights of people with mental illness.

DPD clients who suffer from a mental illness often sit in jail for days, weeks, even months, waiting for a placement in a psychiatric facility where competency can be restored. (The current wait for admission into Western State Hospital is approximately 100 days.) While sitting in jail, clients often decompensate further, suffering more as a result. In 2018, the Washington State Supreme Court found, in *State v. Hand*, that such pretrial detention may violate a person's due process rights under the 14th Amendment. As a result, DPD has a model brief arguing for a dismissal without

prejudice for those clients who face a delay in admissions that exceeds seven days, in violation of *Hand*.

AILEEN TSAO ● ATTORNEY ● TDAD

As a public defender, I appreciate when I can see a shift in someone's perspective of our clients. It might be a prosecutor in a negotiation, a judge at a sentencing, a jury responding to a testimony, or even just in the community hearing about our work.

There are many dehumanizing and fear-based narratives that affect our clients. One challenge is maintaining an optimism that, when it comes to complex issues related to poverty and criminal systems, people ultimately want to learn about an individual's humanity.

The cash bail system. Another critical pre-trial issue is the cash bail system, which has effectively created a two-tiered justice system in the United States: Wealthy defendants who can pay bail are released and go home after arraignment, while those who are poor either plead guilty or sit in jail for days or weeks, losing jobs, housing, and more. Discussions about reform are under way. Meanwhile, DPD attorneys have been provided with model briefing in seeking unsecured bonds for their clients, which require no money upfront, only a written promise to appear in court.

Litigation to address a policy that kept clients in jail an extra night. Two DPD attorneys, Mark Middaugh and Nick Gross, challenged a Seattle Municipal Court (SMC) policy permitting a judge to hold certain defendants in jail more than one business day before a preliminary appearance. The issue surfaced in 2017, when public defenders representing clients on the in-custody arraignment calendar filed affidavits of prejudice – or notices of disqualification – against the sitting judge and were told the defendants' first appearance would have to be set over a day because no other judge was available. SMC followed up with a policy, saying the rules governing first appearances were not mandatory.

In December 2017, after several of DPD's clients spent additional nights in jail because of SMC's policy, DPD filed a writ of review, and in January 2018, Superior Court Judge Dean Lum granted that writ, noting that SMC's policy violated the unambiguous language of CrRLJ 3.2.1. That rule requires a person held in jail after a warrantless arrest to be brought before a judge "the next court day" following arrest.

SMC judges appealed Judge Lum's decision; on Dec. 3, 2018, Division 1 of the State Court of Appeals upheld Judge Lum's writ, ruling in *Khandelwal vs. SMC* that SMC judges must hold preliminary appearances on warrantless arrests no later than close of business the next court day, even when the defendant has filed a notice of disqualification. The ruling, affirming the state's robust first appearance rule, was issued unanimously by a three-judge panel in a published opinion.

Supporting attorneys in developing briefs for return of property and waiving of LFOs. Police often seize the property of DPD's clients at the time of their arrest, property not needed

as evidence nor considered fruits of a crime. Under CrR 2.3(e), which governs return of property, clients can ask to get their property back – both pre-litigation and post-disposition. This is an important issue to clients, whose phones, backpacks, and other personal items are often seized by law enforcement. DPD attorneys now have access to a sample motion for litigating return of property, and DPD put on a training for the department's lawyers in October 2018.

Attorneys also have sample briefs that attorneys can use to seek a waiver of mandatory legal financial obligations (LFOs) – a $100 DNA fee and a $500 victim penalty assessment. DPD contends in its brief that the U.S. Constitution prohibits the collection of mandatory LFOs from Social Security Disability benefits, which many of our clients receive. The issue is pending before the State Supreme Court. The department developed the brief and offered a training to further support attorneys in fighting against the imposition of these harmful fines.

DOUG VAVRICK ● PARALEGAL ● TDAD

As the paralegal in TDAD's Sex Offender Commitment Unit, I experience many challenges assisting those our state has labeled as "sexually violent predators." Our clients are pariahs among pariahs, and our society has made it easy to discard them. It is incredibly rewarding and satisfying to help these people succeed against all odds to surmount the incredible obstacles blocking their reintegration to a civilized society. Attending an unconditional release hearing for one of our clients is like going to a graduation ceremony, except in these instances, the client is rewarded for their hard work and determination with their freedom instead of a diploma.

Juvenile reforms: Partnering with the community to effect change

DPD looks forward to the day when the juvenile legal system is replaced by community-owned supports, interventions, and justice. Until then, DPD is partnering with the community to change several policies and advance several reforms that could help make the juvenile system less harmful and unjust.

An expedited resolution program for youth. The department helped to shape a new program called Community Empowered Disposition Alternative Resolution (CEDAR), an expedited resolution program that allows certain first-time juvenile felony offenses to be quickly reduced to a misdemeanor or less serious felony with the promise of a dismissal or further reduction of the charge if the youth successfully engages with a community intervention. The program, which started in August 2018, includes a community engagement plan and additional possible case benefits for youth who participate. It is supported by a community navigator from Choose 180, a community-based organization.

Simplified Miranda warnings. DPD is working with community partners to advance simplified Miranda warnings for youth. Such warnings are being used by the King County Sheriff's Office; DPD is currently working to encourage the Seattle Police Department to embrace them as well. Researchers have found that adolescents often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them. Research also shows that adolescents are vulnerable to "yea-saying" or acquiescing when an officer asks them if they want to waive their rights. When police use plain

language to explain to youth their rights by asking them simple and clear questions about whether they want to waive them adolescents can make a more informed choice.

LAUREN CONNER ● ATTORNEY ● TDAD

I find it rewarding to be able to collaborate with public defenders working at the different divisions. DPD employs some of the smartest and hardest-working attorneys I know, and it has been great to learn from them both in the courtroom and in the office. Given DPD's focus on trainings open to attorneys across divisions, it has been invaluable to collaborate with other attorneys to problem-solve complex legal issues. One of the biggest challenges has been dealing with the massive amount of cases that come our way. Our office is not adequately staffed or resourced to handle the mountain of cases that are assigned to us every day. I often work late into the evening and on the weekends just to keep from drowning in the workload.

Working to end coercive plea-bargaining practices and youth strip searches. DPD is seeking reforms to make plea-bargaining practices in juvenile court less coercive, while still allowing for outcomes that reflect a youth's individual circumstances as well as broader considerations of justice and fairness. Current practices are inconsistent with adolescent brain science and the County's commitment to equity and social justice. Implementing the proposed reforms would make King County a leader in juvenile legal system reform.

DPD has also asked the County's Department of Adult and Juvenile Detention (DAJD) and Department of Public Health to significantly restrict when incarcerated youth can be strip searched, a proposal that furthers the county's objective of taking a "trauma-informed approach" to legal system involved youth and to limit the "traumatization of youth in detention."

Zero Youth Detention. DPD has been actively involved in the Executive's development of a Road Map to Zero Youth Detention, a strategic plan to reduce the number of youth in detention and $4 million in funding to begin implementing the plan. The road map was publicly released on Sept. 9, 2018. Since then, DPD has attended weekly workgroup meetings focused on improving family engagement and linking youth on electronic monitoring with community supports.

Family Defense: Working with advocates to improve practices

The department has joined forces with the Mockingbird Society, the King County Executive's Office, and other youth advocacy groups to address state practices that harm children and to improve the practice of family defense in King County and throughout the state. Here are some highlights.

Ending the use of "run warrants." DPD, the Executive's Office, and other partners have worked aggressively to convince the state to end its troubling practice of arresting foster children who have run from their court-ordered placement. Washington is an outlier in this practice; few states incarcerate status offenders (foster youth who run away, youth who stay out of school, or youth who disobey their parents). Ample evidence shows that incarceration is harmful to youth and fails to address the underlying causes of status-offending behaviors. In the case of foster children, jail does not help them access services; in fact, it pushes them further from adults who could help them, teaching them to fear adults and the systems those adults represent.

DPD's work has entailed several meetings with the state Department of Children, Youth and Families (DCYF), which issues the run warrants; attempts to engage with the judiciary; strategy sessions with partners; some litigation, and strategic engagement of the press. (See "Strategic media relations," page 21.) DPD has also worked with lawmakers who are attempting to use legislation to force the state to end detention of status offenders.

MOU on Family Treatment Court reached. After several meetings, DPD, representatives from the Family Treatment Court, and other stakeholders agreed to a memorandum of understanding (MOU) in December 2018 that lays out the mission, goals, and objectives of the Family Treatment Court (FTC). DPD Family Defense supervisors negotiated this new MOU, keeping in mind the unique needs of DPD clients in problem-solving courts. Of particular note is that the MOU reinforces the defense role, including keeping client confidences, within a treatment court setting. In addition, DPD requested and the court agreed to language that requires FTC personnel to remain impartial and to not take positions on issues that are pending on motions before the court. This is the second MOU since the court's establishment 10 years ago.

DPD challenges practice of depriving foster youth in college of Extended Foster Care. DPD's family defense practice represents young people who turn 18 while they are still in foster care; once they turn 18 those youth become eligible for a state benefits program called Extended Foster Care (EFC). Recently

LIZ ANGOUS ● LEGAL ADMINISTRATIVE SPECIALIST ● TDAD

What did I find rewarding over the last year? TDA's move to its offices in Dexter Horton. New offices, new faces, new challenges, a fresh start in a new surroundings. I was so happy to move! It was also rewarding to again participate in the Employee Giving Program and to work with people from Superior Court and our DPD divisions on the Taste of King County. On the challenging side was also the move to Dexter Horton! The months leading up to the move were fraught with anxiety. So many years in one place, so many boxes, so much dirt! Huge changes at DPD. But change is good, and I'm looking forward to our future.

the state has tried to deduct $200 from the benefits of youth in Extended Foster Care who are staying in college dorms. In other words, those young people who have aged out of foster care and then defied the odds and made it to college faced a loss of the few benefits the state provides. Hannah Gold, an attorney at NDD – with support from the Director's Office and Colleen Shea-Brown from Legal Counsel for Youth and Children – briefed the state on the constitutional issues raised by this policy. Following that briefing, DCYF agreed to stop this practice.

SAFA PEERA ● ATTORNEY ● NDD

Here is a story that shows why I love my job: Over the course of a year and a half, I worked with one of my young clients through multiple cases. Only once did he make it to a court hearing while he was out. Every other time I saw him in jail, met him on the streets, or see him when he swung by my office. The morning of his review hearing he was not in compliance again and was looking at jail time. Against all odds, he showed up at my office sobbing but mustered up the courage to walk up with me to face the judge. We got him evaluated for CD while I waited in court and when we got in front of the judge right before noon, she dismissed his cases. The hardest part of my job is knowing I just don't have the time to develop such a relationship with all of my clients.

Months later, DCYF issued emergency Washington Administrative Code (WAC) rules that would have made all incarcerated youth ineligible for EFC. DPD wrote a letter in opposition to the proposed rules that was signed by nine youth advocacy organizations. Subsequently, at a meeting with DCYF Secretary Ross Hunter and his staff, DPD, together with representatives from Team Child and A Way Home Washington, reached an agreement with DCYF that incarcerated youth are eligible for these benefits. We are waiting to review proposed changes to permanent WACs that would memorialize this agreement.

Joining Forces: Working with partners to reshape the criminal legal system

DPD is constantly looking for other ways to partner with the community to reduce the impact of the criminal legal system on people's lives. Here are a few other examples of efforts that took place over the past eight months.

Budget for Justice. DPD joined forces in 2018 with the Budget for Justice Coalition, an effort by community-based organizations to influence the City of Seattle's 2019-2020 biennial budget with the goal of reducing the amount of money slated for probation and jail contracts and re-investing those funds in more effective, less harmful community-based alternatives. The coalition is part of a national effort to end mass incarceration and create safer and healthier communities through the creation of a comprehensive "justice reinvestment" initiative. Though not successful in securing a divestment from SMC probation, the coalition brought these issues to light, garnered media attention, and laid the groundwork for future reinvestment strategies.

Jail-based reforms. Partnering with Disability Rights Washington, DPD was able to get the county's Department

of Adult and Juvenile Detention to agree to install a video relay phone system for inmates who are deaf or hard of hearing. The new phone systems are slated for both the downtown jail and the Regional Justice Center and are the first of several steps DAJD plans to take to make the two jails more accessible to members of the Deaf or hard of hearing community.

Alexa Huling, a social work intern at NDD last year, working closely with her supervisor, Rachel Dryden, convinced the jail to stop charging 50 cents for the use of lockers, a barrier to visitors who either didn't have the exact change or did not have 50 cents. Working with Rachel, Alexa researched the issue, made some public disclosure requests, and put together a set of arguments for why lockers should be free. Among her arguments was the disproportionate impact on people of color, making paid lockers inconsistent with the county's ESJ initiative. The jail ended the practice last winter.

Post-conviction relief unit. Criminal records hinder a person's ability to get a job, secure housing, obtain benefits, and more. With support from the Executive and the County Council and funding from the County's 2019-2020 budget, DPD launched a new post-conviction relief unit that helps people rebuild their lives by vacating convictions and expunging records as allowed under state law. One paralegal and the equivalent of one full-time attorney provide the legal help eligible clients need to get convictions vacated. The pilot project also provides funding to the King County Prosecuting Attorney's Office to vacate convictions. The new unit also helps clients get their records expunged, which means removing an arrest record or criminal charge that was later dismissed, and to get records sealed.

MATT PANG ● SUPERVISING ATTORNEY ● SCRAPD

It has been very rewarding to see how successful so many of the new attorneys are in King County District Court in Kent. Attorneys from both SCRAP and ACA have been very successful at trial and motions and have been setting a lot of trials. The workload for all of us has been challenging, but what's new? At the same time, it is inspiring to see people in each job classification put their all into their work to get things done!

Text messaging: A way to address failure-to-appear rates. Many of DPD's clients fail to make court dates because of the challenging or chaotic nature of their lives. Research shows that text message reminders significantly reduce failure-to-appear rates, which in turn reduce the number of bench warrants issued on DPD's clients. To that end, DPD is working with a small firm called Uptrust to begin a text-messaging system for clients that will enable us to generate automatic messages to clients about upcoming court dates. The system will interface with DPD's case management system, automatically sending reminders to clients based on information DPD staff input into the system. A contract is expected to be signed with Uptrust this spring. DPD hopes to start the system in September at Seattle Municipal Court, expanding to other courts in the system over the remainder of 2019.

THERAPEUTIC COURT TEAM ● ACAD

Jamie Kvistad, lead attorney for the Drug Diversion Court, and her supervisor Karen Murray worked with several players involved with the court so as to make it accessible to a larger number of clients, a significant development for this problem-solving court. (See below.) Drug Court is one of several therapeutic courts in King County that provide clients with potential diversion from prosecution. Others are the Regional Mental Health Court and the Regional Veterans Court. ACAD has the largest team working in therapeutic courts – a team that includes not only attorneys but also two mitigation specialists and a paralegal. Other divisions practice in these courts as well. Pictured above is ACAD's team. From left, back row: Nebiyu Hailemariam, Bobbie Edmiston, Wanda Crawford, Gary Davis, and James Lutz. From left, front row: Jamie Kvistad, John Drenning, Karen Murray, Carina Tong, and Heidi Rettinghouse.

Successfully advocating for reforms in Drug Diversion Court. After months of behind-the-scenes work by DPD attorneys, King County Drug Court is undergoing several significant changes that will increase the number of people eligible for the diversion program and make the program both less onerous and potentially more positive. Among the changes:

- Eligibility has expanded, making it possible for more defendants to participate in the program. For instance, those charged with residential burglary (previously not allowed in the program) can now participate (if no firearm or victim present at time of entry).
- The program's duration has been reduced by one month, allowing graduation in 10 months.
- If a participant slips up, he or she does not have to start over but can continue with the program – as long as the participant is forthright about the stumble.
- Cases where restitution is higher than $2000 will be considered (clients would pay $2000, then the case would be resolved as a misdemeanor at graduation).
- The program will be more individualized, allowing community support in lieu of traditional sober support.

- Finally, the transitional recovery program has changed. Rather than requiring participants to participate in this in-custody program, they can now remain out of custody and participate in community-based treatment programs.

The changes to the program – the first in many years – were approved by the Drug Court Executive Committee in December and are slated to go into effect this spring.

Meanwhile, efforts are underway to improve both the Regional Mental Health Court and the Regional Veterans Court. After a recent two-day retreat, the two courts plan to begin using incentives – or a variety of tangible benefits – to encourage behavior modification, similar to what is already done in the Drug Diversion Court. A new handbook has also been drafted that more clearly explains the roles of all the participants, important clarity that will lead to fewer delays and a better experience for clients.

DARCE NYBOE ● FINANCIAL SCREENER ● DIRECTOR'S OFFICE

I so appreciate having a direct contact with clients. Although sometimes the conversations are challenging, it just really helps to put a voice and sometimes a face to the client. And it feels really good when you've helped someone, calmed their nerves, given them some peace of mind. But we're quite short-handed. And as a result, you don't get a breather between calls and you're constantly trying to catch up.

Legislative Advocacy: Working with lawmakers to effect change

DPD has worked with the Executive Office and other partners during the 2019 legislative session in Olympia to address bills that could have an impact on our clients. We have also testified before the Seattle City Council on pending legislation. Here are some highlights.

- **Working against sweeping changes to the Involuntary Treatment Act.** DPD testified in opposition to SB 5720, a bill that represents one of the most significant expansions of involuntary commitment in decades. The bill would make it easier to detain people by changing critical definitions and extending the length of time they could be civilly committed without seeing a judge. DPD stressed that the state needs to expand access to *voluntary* treatment options and provide services to people who need and want help in the communities where they live.

- **Shaping legislation to address offender scores.** DPD worked closely with Community Passageways and legislative partners in advancing a bill that would end the use of juvenile convictions in adult offender scores. HB 1896 bill did not make it to the House floor. DPD plans to work with partners again in 2020 to reform this short-sighted and harmful sentencing practice.

- **Fighting for clients released from the Special Commitment Center.** DPD testified against HB 1825, which would change aspects of the way people released from the Special Commitment Center obtain a "less restrictive alternative" (LRA) in the community. DPD expressed concern that the bill would add duplicative reports to the

discharge process, making it more cumbersome, and noted that almost all LRAs are by agreement, not by a trial.

- **Advocating for an end to detention for children who are status offenders.** DPD supported legislation (HB 1434 and SB 5290) that would remove detention as a remedial sanction for at-risk youth, truant youth, and foster youth who run from court-ordered placements. DPD testified that incarceration traumatizes youth, fails to provide needed services, and often pushes youth farther from adults who could help them.

DZENITA OMEROVIC ● LEGAL ADMINISTRATIVE SPECIALIST ● SCRAPD

I have found it extremely rewarding to see the direct impact that my work as an LAS has on our clients' cases. I was able to attend a trial for a case that I had done some work on and also attended a re-sentencing hearing for another case I had worked on. Seeing the impact by going to court and talking to our clients has been a great reminder to me that all of us at DPD matter for our clients' futures. What's been challenging has been some organizational issues: Whose job is whose and what exactly is expected of an LAS, which seems to vary division by division at DPD. It can get hard when there are no standardized roles for specific positions such as an LAS.

Strategic Media Relations: Ensuring DPD has a voice in the broader community

DPD has worked effectively and strategically with the news media, giving public defense a voice in the broader community. The director has written two op-eds for the Seattle Times, has issued news releases and statements on key issues, and has proactively reached out to the press to advance key issues. DPD has also enhanced its social media presence, using Twitter, Facebook, and a blog to do so. Below are a few highlights.

Op-eds in the Seattle Times. The director has authored two op-eds since the beginning of her tenure last July. *Combat Seattle's street crime with treatment and housing, not jail* ran in the Nov. 16, 2018, issue of the Times. It was written in response to a commentary by the directors of the three Seattle Business Improvement Areas calling for more arrests and prosecution of people in Seattle. *Jailing runaways does not keep them safe* was published on March 18, 2019. The commentary, a response to the Superior Court Judges' Association, called for an end to jailing foster youth who run from court-ordered placements.

Working with the press on a substantive story. The issue of the state's use of run warrants got front-page coverage in the Seattle Times after DPD staff reached out to a Seattle Times reporter about the state's ongoing and harmful practice. The story – "Washington handles runaway foster kids with handcuffs, shackles and jail. Is there a better way?" – was an in-depth look at the practice, profiling a 14-year-old DPD client (neither her name nor a photograph of her was used) who had run away from a court-ordered placement. The story ran on Sunday, Feb. 17, 2019.

Garnering press from news releases. The department issued a release about its new post-conviction relief unit in March, garnering several stories and news reports as a result. Those stories, in turn, led to dozens of people calling the department to see if they qualified, and several were assigned attorneys. Among the coverage the department received were the following stories:

- Public defenders to help some in King County remove 'scarlet letter' of criminal convictions from their record – Seattle Times
- King County to provide legal aid for vacating convictions – My Northwest (KIRO)
- Can your criminal conviction be cleared? Pub Defense wants to help – KUOW
- New public defense unit to help people vacate convictions, expunge records – The Seattle Medium

Using Facebook to reach people. DPD launched its first Facebook page in 2019, timing the launch to coincide with the release of a "Know Your Rights" video. The video, featuring three young people describing frightening and confusing moments when they were stopped by police, emerged from the ESJ-Community Partnership workgroup chaired by Joshua Saunders, managing attorney at ACAD, and Anu Zangri, an attorney at TDAD. The workgroup was able to get a small ESJ grant to fund it; formed a partnership with Creative Justice, an arts-based alternative to incarceration, to help produce it, and hired Jordan Melograna, who has done work for Disability Rights Washington, to do the video production. In its first week on DPD's new Facebook page, the video got more than 11,000 views. DPD plans to show it at the high school Civics Day panels that staff have supported in the past and hopes to find other ways to get it into the community

BEN KAPLAN ● MITIGATION SPECIALIST ● SCRAPD

Without a doubt, what's been most rewarding is that our division has hired a mitigation specialist supervisor, and we're meeting regularly as a team and working in a very collaborative and supportive fashion. I can't overstate the impact of having someone who does my job supervise me, someone who understands the day-to-day challenges of maintaining a caseload.

As for the biggest challenge, a young woman we've represented for the past three years was just sentenced and sent to prison for 19 years. She's 19 years old. Numerous systems from across the board failed this client. We knew about her from the age of 3 when CPS got involved and when she was in foster care and got in trouble and when she was running on the streets of Seattle. She was a high-risk kid, and we failed her. My personal challenge is to figure out how to continue to move forward when a sentence like this is given and our representation ends.

A note from the unions

Two unions represent the majority of DPD's 415 employees. SEIU 925 represents non-supervisory staff in most job classifications. Teamsters Local 117 represents most of DPD's supervisory staff. Below are the two unions' brief perspectives about DPD over the last several months.

SEIU Local 925

SEIU 925's DPD Chapter, which represents non-supervisory employees at DPD, has undergone substantial leadership changes this past year, and the new leaders look forward to continuing what has already been a productive working relationship with DPD management.

We have been able to come together to address concerns surrounding employee morale during a time of substantial change, and we believe that morale is quite improved. We have drastically increased union engagement, and we have expanded our work to engage employees not only within DPD but in the community at large. We are encouraged by our director's forward-thinking leadership and willingness to hear our concerns and look forward to working with her in the future.

This year we were able to develop some programs focused on the secondary trauma that our employees experience as a result of the work we do. We hope to continue to work on making sure that employees are valued and supported every day. We continue to tackle important issues surrounding job classifications, on-call attorney duty, and senior attorney status, and it is our hope that 2019 will bring some positive changes in these areas. We amended our by-laws to create a Community Engagement Committee, and we hope to expand their work in the new year.

Abbey McMahon, President

Teamsters Local 117

The supervisors of DPD are represented by Teamsters 117. Through many changes in the Director's Office leadership, the supervisors have remained committed to providing strong client-centered representation. The supervisors are organized and have a strong leadership team that meets monthly.

The union participated actively in the search for a new public defender, coordinating with the PDAB and testifying to the County Council. We have been active participants in the defender's transition with all supervisor and leadership meetings last fall and early in 2019. We are pleased that Defender Khandelwal has demonstrated an interest in being collaborative and has met with our members in labor/management committees.

Our members are participating in joint committees to address secondary trauma and to work on the challenges with the on-call attorney service. We have seen a marked improvement in the internal training program and are pleased many of our members have been volunteer trainers. Overall, we have seen an improvement in morale department-wide. We hope to collaborate further with the Director's Office on recruitment and retention of a highly qualified and diverse workforce.

Our bargaining unit negotiated a new contract which became effective Jan. 1, 2018. Following this new contract, we have seen additional Mitigation Specialist Supervisors hired who have experience within the department, and our Administrative Supervisors were promoted to PPM 3, acknowledging the value of our non-attorney professional supervisors. Our union joined forces with labor throughout the County to achieve a positive total compensation package to continue to support our members' important work.

Our members are passionate public defense supervisors who will continue to work with staff with challenging workloads and are lucky to work with the clients we are assigned. Despite these workloads, our membership works with members from SEIU 925 and the Director's Office to ensure our clients receive high quality services.

Alena Ciecko, president

Appendices

Appendix 1: DPD's compliance with the ABA's 10 Principles

Reprinted in its entirety from the Public Defense Advisory Board's 2018 Annual Report

The American Bar Association's *Ten Principles of a Public Defense Delivery System* "were created as a practical guide for government officials, policymakers, and other parties" to use as "fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney." King County expressly adopted these principles in 2013 by including among the county public defender's duties responsibility for "[e]nsuring that the American Bar Association Ten Principles for [sic] a Public Defense Delivery System . . . guide the management of the department and development of department standards for legal defense representation. ..." KCC §2.60.026 (4). The King County public defender is required to file an annual report on the Department's efforts to comply with the Ten Principles, and she has done so in her 2018 Director's Report, dated April 1, 2018. That report describes a public defense delivery system in King County that is generally in compliance with the ABA's Ten Principles. The PDAB makes the following additional observations with respect to King County's compliance with the Ten Principles:

Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Board Comment: DPD has taken positions on criminal and juvenile policies, advocated for its budget, and made hiring decisions without interference by County officials. However, in July 2018, the issue of the Department's independence came to the forefront when then-Interim Director Anita Khandelwal joined a coalition of community groups in calling for a moratorium on building the new Children and Family Justice Center.[4] The position was contrary to the one held by most members of the Council and by the Executive. Interim Director Khandelwal took this position on behalf of DPD after consulting with her leadership team and with juvenile practice experts on her staff – those who have extensive direct experience working with the children and families impacted by the new building. The Board believes Director Khandelwal was doing what an independent defender must do – speaking out on an issue relating to equity and social justice that affects the Department's clients – even when doing so goes against the position of other County officials.

There is no evidence the Executive or Council took any budgetary or other action against DPD or the Director as a consequence of DPD taking a public policy position with which they disagree. This episode serves to highlight the importance and challenge of protecting the independent role of the Public Defender. The King County Prosecuting Attorney is indisputably – and appropriately – a prominent voice on a wide range of policy issues affecting the justice

[4] *Opposition to King County youth jail grows as immigrant-rights group joins effort to halt construction,* Seattle Times, July 17, 2018.

system. In taking these positions, he advances the priorities of his office and enhances its ability to achieve its objectives on a daily basis. Although not a separately elected official, the Director of the Department of Public Defense must have the ability to serve as an equally strong and clear voice on important issues that affect the Department's clients and their communities.

Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Board Comment: Principle 2 addresses the need for a coordinated plan for the active participation of the private bar where caseloads are sufficiently high, as is the case in King County. The assigned counsel panel in King County handles cases when conflicts of interest prevent the divisions from representing the client or when DPD attorneys are at capacity and additional assignments would violate caseload standards. Comments from judges interviewed for this report suggest that the quality of representation by the assigned counsel panel is generally consistent with that provided by DPD staff attorneys. According to data reported in the Director's 2018 Annual Report, DPD made progress in 2017 in reducing the number of felonies that went to assigned counsel due to capacity issues. The Board commends this progress, as it believes that efficiency improves when assignments to the panel based on capacity issues are kept to a minimum.

In our 2017 Annual Report, we found the County did not comply with Principle 2 because it failed to adequately fund the assigned counsel panel. The recently adopted 2019-2020 County budget provides for a much needed and long neglected increase in the rates paid to assigned counsel. The Board still has concerns about the size and apportionment of the increases, as well as the source for funding those increases.

Principle 3: Clients are screened for eligibility and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Board Comment: New procedures adopted this past year and that became effective in January 2017 added telephone financial screening to in-person screening of applicants for appointed counsel. This enhancement provides a more efficient, expedited process, but the quality of the process and the extent to which it has shortened the time between arrest, assignment of counsel, and a face-to-face meeting between attorney and client remain to be assessed. Nevertheless, this is a positive development in achieving greater compliance with Principle 3.

Principle 4: Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Board Comment: Department policy requires counsel to meet with clients within 24 hours of their detention and well before any court appearances. Private meeting space is available at jails and courthouses where defense counsel, paralegals, investigators, and mitigation specialists can meet with clients in confidential settings – but there is a critical exception.

There is a structural issue in first appearance calendars which are held under time constraints which do not allow for critical stage adequate client consultation and advice. Currently, court

time allocation for these calendars do not take into account the changes in competent preparation and advice constitutionally required. Washington Appellate Courts have recently addressed the 6th Amendment failure of such inadequately investigated and advised pleas. See In Re PRP of Burlingame, Washington Court of Appeals Slip Opinion filed May 17, 2018. Current first appearance calendar practices in King County have also been challenged on the same 6th Amendment deficiencies. In addition to the structural problem, there is a facilities problem as well.

The King County Jail Courtrooms, where in-custody arraignments and initial appearances take place, have limited space to allow for confidential meetings between DPD attorneys and their clients. At King County Jail Court Two ("KCJ 2), where Seattle Municipal Court in-custody arraignments are held, calendars are created the morning of arraignment. DPD attorneys meet in a hallway, where jail staff are within hearing distance and other attorneys are also meeting with clients. It is not private or confidential.[5] These meetings take place right before arraignments and initial appearances – where judges make critical pre-trial release decisions. The decision to set bail or release a defendant pre-trial will have a significant influence over the outcome. A recent study in Harris County, Texas, found that misdemeanor defendants detained pre-trial are 25 percent more likely than similarly situated releasees to plead guilty, are 43 percent more likely to be sentenced to jail, and receive jail sentences that are more than twice as long. Paul Heaton, Sandra Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pre-trial Detention,* 69 Stanford L. Rev. 711 (2017). Not providing adequate time or space for misdemeanor attorneys to meet with their clients at a critical stage in the proceedings demonstrates that, at least with respect to Seattle Municipal Court cases, Principal 2 is not being met.

In addition, a significant concern highlighted by the 2018 Director's Report indicates that there is inadequate space in the Kent DPD offices, in particular for NDD attorneys who do not have adequate client meeting space. This issue is apparently on the road to resolution, now that the County Council authorized budget approval in late August to lease and build out space in the Kent Valley Professional Center. Renovations are expected to be completed in the first quarter of 2019.The new space will provide office space for NDD attorneys, support staff, and supervisors, client meeting space, and a conference room with Skype capabilities for remote meeting and training requirements.

There continues to be little office space at the Involuntary Treatment Court for attorneys and staff; however, video hearings have resulted in less need for attorneys to be at the court. ITA attorneys have roving office space at the various hospitals where they practice. While not perfect, there is generally space to speak confidentially with clients in the various hospital units.

Principle 5: Defense counsel's workload is controlled to permit the rendering of quality representation.

[5] In King County Jail Courtroom One ("KCJ1")DPD worked with the jail, the prosecutor's office, and the court to make improvements to the process to allow attorneys adequate space and time to meet with their clients before hearings..

Board Comment: DPD has been complying with the State Supreme Court-mandated caseload standards through a staffing model that was developed early on by a task force led by the Director of the County's Office of Performance, Strategy, and Budget and that included representatives of the Department and the PDAB. The Board believes that applying this staffing model and the supplemental credit system have resulted in compliance with Principle 5. However, after a number of years of applying the model, it is also clear that adjustments to that staffing model may be required, particularly in light of the changing workload created by huge amounts of video discovery produced through body-worn cameras. This increased discovery impacts attorneys, investigators, mitigation specialists, and administrative staff. Also comments from judges highlighted that there may be a lack of investigative and mitigation resources for defenders. Finally, as will be discussed further in the section on the King County Auditor's report, DPD should proceed carefully as it responds to recommendations regarding supplemental credits, those credits that attorneys receive when they spend additional time on complex cases. Supplemental credits have been important in recognizing that the caseload standards are not perfect and that quality representation requires flexibility.

Principle 6: Defense Counsel's ability, training, and experience match the complexity of the case.

Board Comment: As far as matching ability and experience to the complexity of case assignments, the same Washington Supreme Court standards that set numerical limits on the number of cases that attorneys can accept also established experience requirements. For example, in addition to certifying compliance with the basic professional qualifications in Standard 14.1 of the Washington Supreme Court Standards (e.g., familiarity with Washington Rules of Professional Conduct and completing seven CLE hours each year in courses related to public defense practice), an attorney representing a defendant accused of a Class A felony must also certify that he/she meets the experience requirements set forth in Standard 14.2 (e.g., two years as a public defender and trial counsel in three jury trials). Managing attorneys in each of the four divisions are responsible for ensuring that attorneys' experience and skill levels are appropriate to their case assignments.

With respect to training, the 2018 Director's Report provides details of a robust training program. However, concerns about the DPD training program under the former director's leadership led to significant changes being made by the Interim and now Director Khandelwal. Since her tenure as Interim Director, significant changes have been made to the training program, in particular how it is staffed. A list of trainings provided to the Board for the purposes of this report demonstrates that there continues to be a robust training program with numerous in-house trainings provided to attorneys and staff

Principle 7: The same attorney continuously represents the client until the completion of the case.

Board Comment: DPD attorneys are assigned to represent each client at all stages of his/her case through trial with the exception of the initial appearance (e.g., arraignment calendar) at which a calendar lawyer may represent the client.

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.

Board Comment: Parity with the prosecution was an issue that became integral while negotiating the most recent collective bargaining agreement signed by SEIU and the County in March 2018. Salary parity has largely been reached between similar job classifications; however, the question of whether parity requires DPD to have a similar structure, e.g., the same number of senior attorney slots as the prosecutor's office, continues to be debated, as does the question of how to reach parity for defense investigators either in number or salary, where there is not a comparable position within the prosecutor's office. The Board began a preliminary investigation, without resolution, into what "parity" means under Principle 8.

With respect to being an "equal partner" in the justice system, the Director as well as other DPD staff participate regularly in criminal justice initiatives and reform efforts. When interviewed by the Board, the King County Prosecutor emphasized his desire to further partner and collaborate with DPD on systemic reforms.

Principle 9: Defense counsel is provided with and required to attend continuing legal education.

Board Comment: Professional training is a high priority for the Department, and substantial resources, both human and financial, are devoted to providing opportunities for attorneys and non-attorney staff alike. Many in-house CLEs took place in 2017, as documented in the 2018 Director's Report. Training was also a priority for the Interim and now Director Khandelwal, who has encouraged higher utilization of in-house expertise.

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

Board Comment: DPDs collective bargaining agreements, as well as the Washington State Bar Association Standards, set forth a requirement that each agency providing public defense services provide one full-time supervisor for every 10 staff lawyers.

DPD developed an evaluation tool for attorneys in 2016; however, negative feedback from staff and unions led DPD to abandon the tool. The new Director has stated a goal of creating a new tool in 2019. Reviewing for "quality and efficiency according to nationally and locally adopted standards" as required by this principle is challenging, but not impossible.[6] As identified in the King County Auditor's Report, DPD lacks sufficient measurements to ensure the quality of its work. The Board will discuss the Auditor's Report and recommendations in a separate section below.

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[6] The Washington State Bar Association's Council on Public Defense has developed performance guidelines to supplement the State indigent defense caseload standards. In 2011, the WSBA adopted the "Performance Guidelines for Criminal Defense Representation" and in November 2017, the "Performance Guidelines for Juvenile Offense Representation" . The WSBA is currently working on standards for other indigent defense practice areas.

Appendix 2: DPD's DRAFT strategic plan

DPD's Mission Statement
The King County Department of Public Defense represents indigent adults and children facing a loss of liberty. Our department is an independent voice that promotes justice and equity for our clients and advocates for their objectives, interests, and dignity.

Strategic Objective 1: Provide consistently high-quality representation to all of DPD's clients across all divisions and all case areas, thereby becoming a national model for public defense.		
Goals	**Initiatives/tactics**	**Milestones/targets**
1) Guidelines, developed in collaboration with staff, are in place for each practice area; the guidelines are flexible, in recognition of the fact that every client is unique, and sufficiently specific to allow for measurement and comparison.	a. Gather information and input from staff and outside experts about practice area guidelines.	i. Conduct ongoing meetings with supervisors and line staff in each practice area for input through 12/1/2020. ii. Research and evaluate practice area guidelines from other jurisdictions and bar associations by 12/1/2019
	b. Write/publish guidelines for each practice area at DPD.	i. Publish misdemeanor and felony practice guidelines by 2/1/2020. ii. Publish family defense practice guidelines by 10/1/2019. iii. Publish ITA practice guidelines by 8/1/2020. iv. Establish timelines for other case areas by 8/1/2020.
	c. Train on guidelines. Implement guidelines after training has been completed.	i. Train on misdemeanor and felony guidelines from 3/1/2020 to 12/31/2020. ii. Train on family defense practice guidelines from 11/1/2019 to 5/31/2020. iii. Train on ITA guidelines from 9/1/2020 to 3/1/2021. iv. Establish timelines for trainings in other case areas by 9/1/2020.
	d. Develop and roll out staff performance evaluation criteria that reinforce best practice guidelines and support equity and social	i. By 4/1/2021, propose annual evaluations that incorporate practice guidelines. ii. By 5/15/2021, implement these annual evaluations.

	justice in leadership and practice.	
	e. Conduct regular meetings with managing attorneys, supervisors, and line staff to address issues with practice guidelines.	i. Incorporate issues of practice guidelines into weekly meetings with managing attorneys. ii. Meet monthly with supervisors to discuss guidelines. Establish meeting schedule by DATE. iii. Obtain quarterly reports from supervisors and managing attorneys that address issues, concerns, etc., with guidelines. iv. Address and refine practice area guidelines as needed.
2) A case management system is in place that is efficient for all users and facilitates high-quality representation.	a. Collaborate with staff and KCIT to identify system requirements and develop / issue RFP to procure new case management system.	i. Develop RFP by 11/2019. ii. Issue RFP and procure new case management system by 4/2020.
	b. Develop training program for new system. Implement new system after training is completed.	i. New training program developed by 11/2020 ii. Training program launched by 12/2020. iii. Implement new case management system by 1/2021.
3) DPD's ongoing training program reinforces best practice guidelines, strengthens our team-based approach, and promotes innovation. It provides all staff with a solid base of consistent, high-level practice skills.	a. Develop infrastructure for strong training program that meets the stated objective and is responsive to staff needs.	i. Hire training coordinator by 3/15/2019. ii. Obtain ongoing input from staff on training topics to ensure relevance and quality. Have process in place by 10/15/2019. iii. Ensure policy area directors regularly attend trainings to ensure the trainings are high-quality and relevant. iv. Ensure policy area directors identify two experts per quarter to provide in-house CLEs beginning May 1, 2019.
	b. Create annual training curricula for each practice area.	i. Training curricula to be completed by 3/15/2021.
	c. Refine new attorney training program.	i. Complete program by 5/15/2020.

		ii. Make space available for limited number of attendees and small group leaders chosen by WDA
	d. Develop Rule 9 summer intern training program and establish continuing trainings throughout internship period.	i. Complete by 5/5/2020.
	e. Provide coordination and funding to bring local and national subject matter experts in-house to provide training.	i. Create budget to pay for expert CLEs by 10/1/2019. ii. Develop process for attorneys to recommend experts to provide CLE presentations by 7/1/2019.
	f. Coordinate with WDA and other public defense organizations to leverage resources.	i. Meet monthly with WDA to schedule WDA provided CLEs at DPD. ii. Meet quarterly with WACDL to coordinate CLE presentations at DPD.
4) Key performance expectations for each job classification are in place that ensure high-quality client representation and that provide clarity to staff.	a. Collaborate with administrative staff to identify clear performance expectations for each admin job classification. b. Provide supervisor support and training so supervisors can better support their employees.	i. Pilot classification study for all administrative job classifications. Engage relevant staff and supervisors in the study. Complete by 12/31/2019. ii. Assess applicability of the classification study for other job classifications, and launch, if appropriate. 1/2020 iii. Hold monthly lunch-hour discussions with new supervisors to explore supervisory issues/challenges. Begin 4/2019. iv. Work with Dept of HR (DHR) on “leadership essentials” training. Determine plan/timeline for supervisor attendance by 9/2019. v. Establish and roll out plan for the Director's Office to provide supervisors with data regarding these measures. Target date: 6/1/2021. vi. Meet annually with managing attorneys and supervisors to discuss whether division has met performance measures and what

		support is needed to help division meet those measures. Target date: 4/2021.
Strategic Objective 2: Partner with the community to dismantle the systems that oppress our clients and advocate for pathways that will allow them to succeed. Where traditional systems remain, use our community partnerships and expertise to make them less harmful and more restorative.		
Goals	**Initiative/tactics**	**Milestones/targets**
1. DPD identifies issues and policies that harm DPD clients.	a. Collaborate with staff and partners to develop protocols for determining DPD positions on policy issues.	i. Complete protocol by 9/1/2019. Protocol must: ○ Develop a procedure for prioritizing issues. ○ Recognize the importance of being nimble enough to respond to developing opportunities. ○ Engage regularly with staff to identify recurring issues and issues otherwise difficult to litigate on behalf of individual clients. ii. Develop protocols for ensuring community input
2. DPD fights systemic issues in court that oppress our clients.	a. Litigate issues that harm DPD clients. b. File representative writs, appeals, motions for discretionary review, and other relevant litigation.	i. Develop a process for staff to request the DO to pursue representative writs and appeals that present significant policy or legal issues in-house. By 1/1/2020.
3. DPD works with community partners to reshape public debate and affect public policy on issues impacting clients.	a. Use media strategies and social media platforms to shape public debate and advocate on behalf of policy reforms. b. Work with partners to develop commentaries, videos, and podcasts that advance important issues for DPD's clients. c. Redesign website, making it visually stronger and more consistent with DPD's goals, advocacy, and interests.	i. Develop and publish a commentary every six months, co-authoring with partners as frequently as possible. ii. Complete one video or podcast that advances important issues for DPD's clients at least once in 2019. iii. Redesign website by 10/1/2019.

	d. As needed, counter public statements, news stories, or editorials that advocate positions that are hurtful to DPD's client – via letters to the editor, DPD's blog, DPD's website, Twitter, or other platforms.	
4. DPD advocates for upstream investments in services and prevention and advocates for divestment from the criminal legal system and other systems that harm our clients.	a. Support and partner with community-owned and/or community-based organizations to develop and implement divestment or diversion program proposals. b. Work to transfer funding from the criminal legal system to community organizations. c. Support initiatives that promote community alternatives and eliminate the use of incarceration. d. Support programs that invest in preventive services and allow children to remain at home, rather than legal interventions that separate families.	i. During 2019-20 budget processes, staff will testify in city and county budget hearings. ii. During 2019-20 session, staff will take positions on legislation and travel to Olympia to testify. iii. In 2019, DPD will demand that community-based organizations are invited to participate as equals in city and county task forces and other initiatives in which DPD participates.
Strategic Objective 3: Recruit, support, and retain a highly skilled and diverse workforce and develop a respectful and inclusive workplace culture.		
Goals	**Initiative/tactics**	**Milestones/targets**
1. DPD's staff reflect a diversity of backgrounds, including education, race, gender, class, and life experience.	For all staff: a. Identify and eliminate barriers to employment in the recruitment and selection process that have disparate/adverse impact for communities of color and women.	i. Ensure greater diversity by race, gender, and age on all interview panels.
	For attorney staff: a. Develop a predictable and standard annual recruitment plan that targets students committed to public defense from both local and national law schools.	i. Finalize recruitment plan by 9/15/2019. ii. Hire training coordinator who will develop relationships with geographically diverse law schools and minority bar associations.

	b. Cultivate relationships with minority bar associations and law student associations. c. Develop relationships with local educational programs, enhancing students' familiarity with public defense.	iii. Attend at least three minority bar events each year. iv. Training Coordinator will facilitate DPD participation in local high school and college law-related programs, including moot court competitions.
	For professional (non-attorney) staff: a. Build relationships with local educational institutions that have programs consistent with DPD's required skill base and mission. Focus on educational institutions that train paralegals, investigators, and social workers. b. Develop relationships with local educational programs, enhancing students' familiarity with public defense.	i. Identify area educational institutions that have such programs. Meet with at least three such program leads by 10/1/2019. ii. Develop externship program for investigators and paralegals by 1/1/2021. iii. Identify areas of growth and development for DPD's existing social work externship program.
2. A culture of mutual respect and support exists throughout the department, increasing retention.	a. Organize opportunities for staff members to engage with one another in work, training, and development arenas to develop networks of support and relationship and team building. b. Support peer mentoring or affinity groups that help staff support one another. c. Identify and promote activities and opportunities that will promote employee wellness.	i. Create division-by-division calendars of social events containing at least two events in 2019. ii. Create one department-wide event in 2019. iii. Create optional quarterly meetings for each job classification to share workplace experiences and strategies. iv. Expand peer mentoring program to all divisions. v. Survey staff about next Balanced You grant and apply for grant in 2019; develop a program accordingly. vi. Continue work on secondary trauma; develop resources to help staff cope with secondary trauma. vii. Provide in-house sessions on other issues identified by staff as important to health and well-being.

		viii. Organize discussions to talk about and address inequities in the workplace. ix. Continue monthly newsletter, with profiles on staff and bios on new employees.
3. The Director's Office is organized in a way that best supports DPD staff in providing high-quality client representation.	a. Director to propose a management team structure by May 1, 2019. b. Staff to provide feedback by June 1, 2019. Recruitment begins by late summer.	i. By 12/2019, all management positions are filled.
4. With support from Performance, Strategy & Budget, DPD examines and confirms that it is properly structured to minimize conflicts and maintain operational viability.	a. Review caseloads and conflicts to determine optimal sizes of the case area units.	i. By end 2019, make a decision about the size/number of ITA units. ii. By mid-2020, make a decision about the size/number of FD units. iii. By (date to come) make a decision about the size/number of felony units. iv. By 2022, make decision about size/number of SMC units. (Do this for every case area)
5. The department advocates for a budget that provides for adequate staffing and more manageable workloads.	a. Work with PSB and PDAB on staffing model that reflects workloads. b. Advocate for a budget that does not presume that attorneys will carry the maximum caseload. c. Examine data to determine if higher staffing levels are needed and advocate as appropriate.	i. Research alternative staffing models by 5/2020. ii. Data is continuously reviewed and updated to ensure quality. iii. Pilot new misdemeanor credit policy by 6/1/2019