"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."

Justice Hugo Black

THE AMERICAN BAR ASSOCIATION'S

Ten Principles for Quality Public Defense

A REPORT TO THE METROPOLITAN KING COUNTY COUNCIL

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

April 1, 2016

ABA's 10 Principles of a Public Defense Delivery System

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

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.

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.

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

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

6. Defense counsel's ability, training, and experience match the complexity of the case.

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

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.

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

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

The Department of Public Defense

Implementing Ordinance 17678, coupled with a voter-approved amendment to the King County Charter, established the Department of Public Defense (DPD) in 2013 as a charter-created department within county government.

The department is responsible for managing and providing public defense services to indigent clients in King County, ensuring effective representation at a reasonable cost to the county. Specifically, the department is to screen residents in need of legal services to determine their eligibility; provide effective representation to those deemed eligible; establish and maintain a panel of outside counsel, assigning cases to the panel when needed because of conflicts of interest; and prepare an annual budget that evaluates and forecasts service delivery levels. The department is directed by the county's Public Defender who is expected to ensure the department carries out these duties.

The Implementing Ordinance also calls for the Public Defender to ensure that the American Bar Association's 10 Principles of a Public Defense Delivery System guide the management and work of the department and to report on the results of her efforts in that regard on April 1 of each year. Specifically, KCC 2.60.026 says the department is to be headed by a Public Defender "whose duties include … ensuring that the American Bar Association 10 Principles for a Public Defense Delivery System, as approved by the American Bar Association House of Delegates in February of 2002, guide the management of the department and development of department standards for legal defense representation, and filing with the clerk of the council by April 1 of each year a report on the results of the county public defender's efforts in that regard."

Cover photos, clockwise from top left: Kari Boyum, Ray Ward, and Matt Pang; Katherine Hurley talks to reporters at juvenile court; David Sorenson and Colleen O'Connor; DPD employees give standing ovation to keynote speaker at Creating Harmony; Leo Hamaji makes his opening statement in a capital case last year. Photos by Leslie Brown.

Executive Summary

The American Bar Association's 10 Principles of a Public Defense Delivery System are a practical guide for public defenders across the country. They highlight a fundamental set of standards while also attempting to tackle some of the biggest issues that have hampered quality public defense for decades: staggering caseloads, inadequate training, poor facilities, scant resources, and a huge lack of parity between prosecutors and defenders. These principles are a guidepost: By heading in the direction they point, those who oversee public defense organizations have a better chance at ensuring that the clients they serve receive effective, ethical, equitable, independent, and conflict-free legal representation. In a 2010 speech, then-U.S. Attorney General Eric Holder called the 10 principles "the building blocks of a well-functioning public defender system."

The King County Department of Public Defense – not even three years old – is working hard to achieve both the practical and aspirational meaning of these 10 principles. In some areas, the department is strong. In other areas, it has a long way to go. This report is a candid assessment of its progress in meeting these principles, a challenge it embraces.

It comes at a time of much change and growth in the department. Since the department's last report in April 2015, DPD has made significant progress in several areas:

- The department now has a full leadership team in place, with directors focused on training, assigned counsel, the quality of representation in all of its case areas, and policy development.
- It has launched an on-call attorney system that provides 24/7 legal advice and assistance to county residents facing criminal proceedings or with questions or concerns about a criminal matter or another practice area DPD handles.
- DPD launched Legal Files, a unified case management system, in all four divisions.
- Collective bargaining agreements have been reached, moving the department closer towards establishing parity in total compensation between DPD and the Prosecuting Attorney's Office.
- And most importantly, DPD attorneys achieved significant successes in the courtroom this past year, including two death penalty cases where the defendants' lives were spared and a third where the prosecutor took death off the table because of decisions by those other two juries.

Of course, many challenges remain. As highlighted in this report, attorneys in the civil commitment case area are struggling with inadequate facilities, video courtrooms spread out across the county, and high caseloads. The department still has unmet technological needs and facility issues.

King County and the County Council were wise to require the Public Defender to use these 10 principles to guide management and development of the department and to issue an annual report outlining her efforts to do so. This report will give policymakers a clear sense of the department's progress to date, as well as

the steps still needed to ensure clients are receiving the effective, constitutionally mandated public defense envisioned when the ABA developed these guiding principles. ❖

Public Defender Lorinda Youngcourt leads a session on ethical representation for DPD's supervisors.

DPD establishes a new leadership team

In 2015, Lorinda Youngcourt put in place her new leadership team, reflecting her vision for a department that is client-focused, that provides excellent training, that strengthens all of DPD's practice areas, and that works to address systemic reforms in criminal justice. The new team – announced in November 2015 – has enabled DPD to begin a number of new policies and initiatives, all with an eye towards creating a strong, effective, and independent system of public defense in King County.

- Deputy Director: **Floris Mikkelsen**
- Director of Operations: **Gwen Clemens**
- Director of Training: **La Mer Kyle- Griffiths**
- Assistant Training Director: **Daron Morris**
- Policy Director: **Anita Khandelwal**
- Assigned Counsel Director: **Robert "Burns" Petersen**
- Felony Practice Area Director: **Louis Frantz**
- Misdemeanor Practice area director: **Twyla Carter**
- Managing Attorney at ACA: **Gordon Hill**
- Managing Attorney at NDD: **Jeanette Brinster**
- Managing Attorney at SCRAPD: **Tom Griffiths**
- Managing Attorney at TDA: **Rick Lichtenstadter**

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

The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

The question of independence has been an important one since the four nonprofit agencies came in-house and the Department of Public Defense was created. The department was structured with independence in mind. The charter amendment that voters approved in November 2013, creating the department, makes that clear: It outlines the duties of the department, including advocacy for justice system improvements and an adequate budget, and then adds, "Elected officials shall not interfere with the exercise of these duties by the department."

> "The county intends to maintain the high quality of public defense services that public defense attorneys and staff have delivered and to which King County has long been committed, by promoting independence from political influence, a quality work force and operational efficiency in the provisions of public defense services." KC Ordinance 17678

In 2015, there were many examples of DPD exercising its independence on behalf of clients. In some instances, the department opposed a policy or legislative action that another Executive department supported; other times, the department disagreed with court officials or state agencies. The department, with the support of the Public Defense Advisory Board and Executive Office staff, also worked to address a serious budget shortfall that would have led to layoffs of attorneys and support staff.

Taken together, these examples of DPD's advocacy in 2015 and early 2016 demonstrate that department leaders have the ability and will to act independently and that the structure the Executive and the Council established – with support of voters – affords DPD opportunities to do so. DPD's independence also means it can collaborate more effectively with its criminal justice partners, offering proposals that reflect a well-vetted and unified position.

Here are some highlights from 2015 and the first quarter of 2016:

Legislative action: The department opposed a mental health bill known as Joel's Law, supported by another department in King County; DPD lawyers testified in Olympia against its passage. The department submitted testimony to the state Legislature in support of the abolishment of the death penalty, while the Executive Office took no stance on the bill. Lorinda Youngcourt also took action on behalf of the state Office of Public Defense's budget,

which was facing serious cuts during the 2015 session; in an email to the Senate Ways and Means Committee, she urged restoration of OPD's budget, noting many of those dollars support critical training needs statewide.

Video hearings of civil commitment proceedings: The department has strongly opposed a move by King County Superior Court to implement video hearings for individuals in psychiatric and community hospitals facing involuntary civil commitments. In testimony to the County Council and in other settings, Ms. Youngcourt acknowledged that transporting clients by gurney in an ambulance, while infrequent, is inhumane. But the solution – video hearings for *all* patients – is far from the right answer. First, it's very hard on patients, many of whom don't understand why a judge is speaking to them through a television monitor. Video hearings also raise serious due process concerns, as the client and defense attorney are not in the same room with witnesses, the prosecutor, and the judge; sometimes the defense attorney cannot hear the witness or see his or her demeanor, an important element to a defender's case. DPD has urged the Court and Council to explore other approaches, including having judicial officers and prosecutors travel to hospitals for these hearings, eliminating the need to hold them via videos, an approach the court has rejected.

Budgetary issues: DPD faced a budget crisis after the Executive put forward his 2015-2016 budget – a spending plan that would have resulted in 40 layoffs, a 10 percent reduction of DPD's staff. The Public Defense Advisory Board, as well as DPD staff, objected strongly to the appropriation and potential layoffs in its budget report in 2014, resulting in the Council and the Executive agreeing to hold off on the cuts and instead establish a DPD Budget Workgroup, co-chaired by Budget Director Dwight Dively and the Public Defender. That workgroup spent several months analyzing DPD's budget, staffing needs, caseloads, and other information, and ultimately the Executive proposed a $9.07 million supplemental appropriation for the department. In September 2015, the Council approved the request.

Publication of sexual deviancy information: DPD worked to block the release of records about a client's sexual deviancy evaluations, records that are often sealed by court order. A member of the public is attempting to use the Public Records Act to obtain and then post such records on her website. The Prosecuting Attorney's Office was prepared to release this information until DPD Policy Director Anita Khandelwal stepped in, worked to identify other DPD clients who face the same potential situation, and filed several motions, securing a preliminary injunction and class certification.

As these examples indicate, the department – established only two and a half years ago – is acting with a high degree of independence. It does so not on a whim but when DPD leaders believe there is a serious issue at stake that could have profound ramifications on the indigent clients DPD serves. It's noteworthy that even while exercising this independence, DPD is an Executive department and Ms. Youngcourt remains a full and active member of the Executive's cabinet. She and other members of the department work collaboratively with their colleagues in the Executive branch on a number of issues. Ms. Youngcourt also chaired the 2015 Employee Giving Program annual campaign. All of this suggests the framework the Executive and the Council established in 2013 is working well and as intended. ❖

The Public Defense Advisory Board | Key player in DPD's independence

A key to the department's independence is the Public Defense Advisory Board, an 11-member panel that acts as an advocate not only for the department but also for public defense as a whole in King County.

The board, chaired by Marc Boman and vice-chaired by John Strait, has been actively engaged in the department and a partner to Lorinda Youngcourt, providing guidance, support, and insight as DPD confronts the challenges that come with the establishment of a new department and an approach to public defense that is new not only to King County but also, it appears, nationwide. The board is comprised of leaders in the criminal and social justice system, and on several occasions, individual board members have stepped forward to advocate for public defense or lend expertise to the department. Mr. Boman, for instance, served on the interview panel when Ms. Youngcourt selected her deputy director, and Paul Holland, another board member, led a small group at a supervisor training. They also provided advice on how best to address the ethical issues arising from a department with four divisions representing clients and have met with the Executive and Councilmembers to address issues or concerns.

Per the ordinance that established it, the board has issued two reports since its establishment in 2014 – one, in 2015, on the state of public defense in King County and the other, in 2014, on the impact of the Executive's 2015-16 budget on public defense. It generally meets every other month. Ms. Youngcourt attends those meetings, as do other DPD employees, as needed.

The board, however, is advisory only; it does not oversee the department. Members have been cognizant of that, as well. Again, they've provided advice to Ms. Youngcourt and other members of her leadership team, while also respecting her role as DPD's director.

Members of the Public Defense Board and DPD staff meet with Budget Director Dwight Dively.

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.

The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

The Department of Public Defense is structured so as to keep as many cases within the department as possible. With four divisions, each acting as its own law firm, DPD assigns far fewer cases to outside attorneys due to conflicts than other similarly sized public defense departments. The assigned counsel panel also provides an important safety valve when DPD's attorneys are at capacity.

In 2015, 14 percent of DPD's cases were assigned to outside counsel – most of them due to conflicts but some due to capacity, meaning the department did not have enough attorneys in-house to handle all cases. (See chart, next page.) While this figure represents a slight increase in the number of assigned counsel cases in 2015, it is important to note that this was a year of significant change for the department. The department's reorganization to better address caseloads over the long term (see Principle 5) resulted in a small number of additional cases being shifted to assigned council. The department is standardizing how conflicts and capacity are addressed across the division and is closely monitoring the assignment of cases for 2016.

Meanwhile, even with a small number of cases going to outside counsel, the department is working hard to ensure the attorneys on the panel are providing quality services to their indigent clients. Last year, the department initiated a new process for its assigned counsel panel. Robert "Burns" Petersen, a seasoned and skilled attorney, is DPD's new director of assigned counsel and a member of Lorinda Youngcourt's leadership team and is now leading this effort. Under Mr. Petersen's direction, the department has launched a review of its existing panel based on a thorough application process: All existing members of the panel – and any lawyer who would like to be on it – must show they have the skills, experience, and training in the practice areas for which they seek assignments. The application includes reference checks, consultation with members of the criminal justice system (judges, prosecutors, defenders), and a review of past cases.

Members of the panel also need to satisfy all ongoing requirements for practicing law as determined by the Washington State Supreme Court, including continuing legal education (CLE) requirements; seven of those annual CLE hours must be courses relevant to the lawyer's assigned case areas. Additionally, a member of the panel must immediately notify the assigned counsel director if he or she is found to have

provided ineffective assistance or is the subject of a WSBA complaint.

DPD has established several review teams – made up of DPD lawyers and private attorneys – to provide input on the quality of the applicants (these review teams include dependency, juvenile, adult felony, adult misdemeanor and civil commitment). The department plans to announce its new assigned counsel panels by practice areas, with the first one being the juvenile and dependency panels, starting this spring.

These and other safeguards and reviews will help to ensure DPD's assigned counsel panel is comprised of skilled attorneys able to provide excellent legal services to clients. Indeed, DPD believes its ongoing and concerted efforts to ensure a high-quality assigned counsel panel will result in one of the best panels in the country. ❖

Distribution of case assignments by case area

Case Area	2010		2011		2012		2013		2014		2015	
	A/C	Div	A/C	Div	A/C	Div	A/C	Div	A/C	Div	A/C	Div
Becca	5%	95%	6%	94%	4%	96%	2%	98%	7%	93%	5%	95%
COC	6%	94%	3%	97%	3%	98%	12%	88%	6%	94%	15%	85%
Dependency-Child	34%	66%	43%	57%	57%	43%	45%	55%	56%	44%	61%	39%
Dependency-Parent	16%	84%	16%	84%	16%	84%	18%	82%	30%	70%	30%	70%
Expedited	1%	99%	1%	99%	1%	99%	1%	99%	0%	100%	1%	99%
Felony	12%	88%	15%	85%	14%	86%	17%	83%	16%	84%	17%	83%
ITA	0%	100%	0%	100%	0%	100%	0%	100%	1%	99%	1%	99%
Juvenile	6%	94%	6%	94%	5%	95%	3%	97%	9%	91%	12%	88%
Misd. Appeal	12%	88%	4%	96%	0%	100%	0%	100%	2%	98%	0%	100%
Misdemeanor	19%	81%	21%	79%	19%	81%	15%	85%	15%	85%	18%	82%
SOC	31%	69%	33%	67%	23%	77%			0%	100%		
Total	**12%**	**88%**	**13%**	**87%**	**12%**	**88%**	**12%**	**88%**	**13%**	**87%**	**14%**	**86%**

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 client.

Counsel should be furnished upon arrest, detention, or request, and usually within 24 hours thereafter.

Screening of clients

The Department of Public Defense has several screeners who screen out-of-custody clients to determine eligibility for a public defender. Currently, there are 5.6 full-time screeners and two on-call screeners. They have offices in the two county courthouses (Seattle and Kent), as well as in the courthouses in Redmond, Shoreline, and Kenmore. (Seattle Municipal Court provides its own screening services to those seeking an attorney for SMC cases.) The out-of-custody clients who come to the screening office face a mix of misdemeanor or felony charges or are facing a dependency petition. The department automatically assigns an attorney to people who are in custody, regardless of the charge. DPD also automatically assigns a lawyer to dependency in-custody clients as well as juvenile clients, whether in detention or not.

DPD screened 8,337 out-of-custody people in 2015, a decline of nearly 1,000 – or nearly 11 percent – from the previous year. Screenings have declined steadily over the past five years. From 2010 to 2015, the number of people screened has dropped more than 23 percent. (See chart.) DPD does not know why screenings are lower. It could be due to shifts in the criminal justice system; for instance, a larger percentage of clients may be in custody, rather than out of custody. Or it could stem from changes in charging practices by the Prosecuting Attorney's Office and ongoing efforts to divert people out of the criminal justice system. DPD plans to continue to analyze its data in 2016 so as to more fully understand the drivers behind these and other statistics.

Total Screenings by Location

Screening Location	2010	2011	2012	2013	2014	2015
Shoreline / North	700	732	575	578	556	638
Juvenile Court	889	6	523	609	588	149
KCCH / Seattle	3,824	4,319	3,605	3,250	3,166	3,386
MRJC / Kent	3,989	3,615	3,685	4,117	4,264	3,521
Redmond / East	1,521	1,227	1,158	1,066	807	663
Total	**10,923**	**9,899**	**9,546**	**9,620**	**9,381**	**8,357**

Assignment of case to an attorney

DPD's standard is to ensure it has assigned a division and/or an attorney to an in-custody defendant within one business day of the department receiving notice that charges have been filed against the defendant. This standard is better than many jurisdictions, where an attorney might not be assigned until just before arraignment (sometimes two weeks after the defendant has been arrested and detained). It is also in compliance with CrR 3.1, the state rule that provides a right to counsel as soon as practicable after arrest. However, defendants in King County are often in custody for 48 to 72 hours before charges are filed, if they are filed at all – a period of time in which most do not have contact with an attorney.

This standard – assignment to a division within one business day of charges being filed – is one DPD largely meets. (If DPD needs to assign outside counsel to the case and if the case is particularly complex, it might take the department an additional day to find the right attorney to take the assignment.) The four divisions have established procedures to contemporaneously confirm that the requirement is met and continue to do file checks, looking to see that clients have been contacted within one business day of assignment. However, the divisions have different approaches to the requirement for prompt client-contact. One, for instance, almost always has an attorney make that first client contact; others send a paralegal or legal clerk. Those divisions that send a legal clerk are in the process of making changes internally so that an attorney makes that first client contact.

The department's new on-call attorney (OCA) system, mentioned in the Executive Summary, also helps to ensure those who are detained have quicker access to counsel in compliance with CrR 3.1 (c)(2). The service, a significant expansion of the department's previous on-call system, is available 24/7. While the goal is to ensure a wide range of people involved in the criminal justice system have access to needed legal advice, DPD believes the OCA system is particularly critical to those who have been detained but not yet charged, giving them access to an attorney who can answer their questions and give them sound legal advice. ❖

> "At the earliest opportunity a person in custody who desires a lawyer shall be provided access to a telephone, the telephone number of the public defender or official responsible for assigning a lawyer, and any other means necessary to place the person in communication with a lawyer."
>
> *Washington Court Rule CrR 3.1(c)(2)*

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

Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural, and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses, and other places where defendants must confer with counsel.

DPD attorneys generally meet with their clients and interview them shortly after they've been charged and before arraignment (as noted under Principle 3). The availability of rooms, offices, and booths for confidential access to clients is highly variable, with some courthouses providing adequate meeting places and others not.

Perhaps the most challenging facilities situation is at the Mental Illness Court (often called the ITA – or Involuntary Treatment Act – Court), where civil commitment procedures take place. The ITA Court is located in the 9th & Jefferson Building. DPD has two divisions representing clients facing civil commitments, one of which was added to the practice area in 2015. Both divisions – one in the 9th & Jefferson Building, the other in the Walter Scott Brown Building across the street – have cramped, shared office spaces, inadequate to their needs when all attorneys are in the office. The full-scale renovation of Harborview Hall is expected to improve this situation; completion of that project is still two years away.

However, because of the implementation of video hearings in ITA Court, those attorneys are not often in their offices at 9th & Jefferson or the Walter Scott Brown Building. As noted earlier in this report, King County Superior Court has implemented video hearings for individuals in psychiatric and community hospitals facing involuntary civil commitments, forcing public defenders to travel to four – soon to be five – hospitals. This has raised a new and equally challenging set of issues. The hospitals have created video courtrooms, but confidential rooms – where attorneys can talk to their clients or family members – are at a premium. In some instances, the client is in a shared room, and attorneys either have to whisper to their client or ask

Three attorneys and a social worker from ACA's civil commitment unit share a crowded office some mornings.

the roommate to leave. In other instances, attorneys can go to a conference room, but those rooms – used by any number of professionals who need confidential meeting areas – are in high demand and often not available; there are no dedicated attorney/client conference rooms. The department is working with the hospitals to try to resolve these issues, but so far, little progress has been made.

In the county's other courthouses, the situation varies, depending on the courtroom and the proceeding that is under way. The Maleng Regional Justice Center is the better of the two county courthouses. Most floors have conference rooms adjacent to the courtrooms that an attorney can use. When those aren't available, a resourceful attorney can often find another room for quick client consultations. In the Seattle courthouse, the situation is more challenging, and attorneys often meet with clients on benches in hallways, though there are conference rooms sometimes available there, too. The Kent and Seattle jail both provide booths for attorneys to meet with clients, but in Seattle, they don't provide the amount of privacy an attorney needs; what's more, when an attorney booth is not available, he or she has to use one of the visitor booths, which do not have doors.

Not all attorneys meet with clients in their offices, but those who do face challenges, as some offices are quite small. Two significant changes are in the works that the department hopes will address its office needs. First, in Kent, the county's Facilities Management Division (FMD) has located a facility near DPD's current Meeker Street Law Building and will be issuing a letter of intent to the landlord soon to proceed with negotiations and build-out of the space. And in downtown Seattle, FMD and DPD are exploring the use of leased space instead of a proposed remodel of the historic Yesler Building, allowing the Community Corrections Division to remain in Yesler. The intention is to find a single location for all staff serving clients out of the King County Courthouse as well as administration / director's office staff. *(See Principle 8 – Facilities – for more information about DPD's facility needs.)* ❖

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

Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

Under both Washington state law and rules adopted by the Washington Supreme Court, attorneys must certify each quarter that they are in compliance with court-established caseload limits. DPD leadership takes these caseload requirements seriously and strives to ensure attorneys' caseloads are within court-mandated standards. The department has further addressed the issue of caseloads by creating a system whereby attorneys receive supplemental credits for cases that are complex and take additional time.

In 2015, the department undertook a caseload reorganization to ensure it had the right number of attorneys in its various practice areas. The department, for instance, added a second division to the fast-growing civil commitment practice area, reduced its juvenile practice area, and made other changes that reflected shifts in case area filings. Supervisors are also keeping a close eye on their attorneys' caseloads, and the department as a whole is encouraging attorneys to close cases in a timely manner – all with an eye to careful and accurate management of caseloads. What's more, the Budget Workgroup, in its 2015 report, updated the county's model used to determine staffing needs. This, too, has helped address workloads for attorneys.

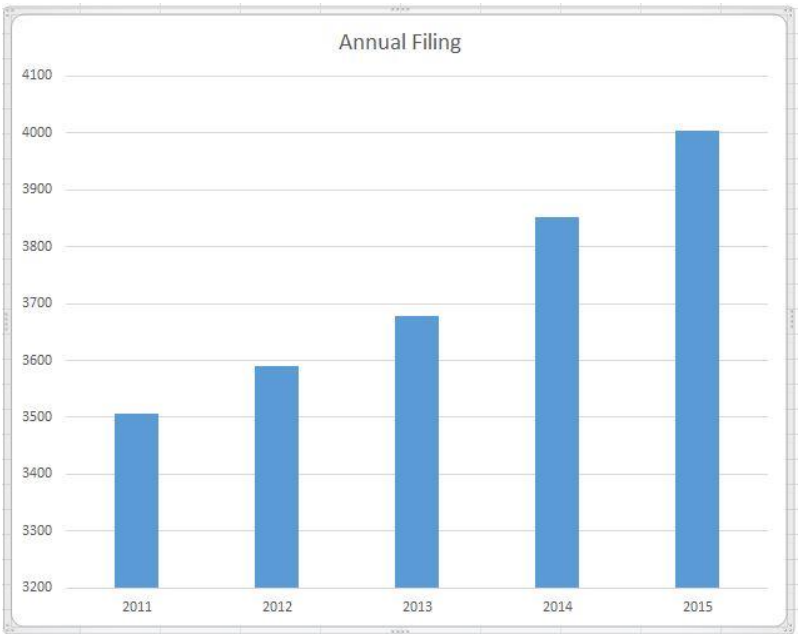
Attorney Alena Ciecko meets with a client outside of the Family Court, one of King County's therapeutic courts.

One area that continues to be problematic, however, is the civil commitment case area. Due to the implementation of video hearings, discussed elsewhere in this report, attorneys who work in the ITA Court now spend a huge amount of their workday traveling from one hospital to another, often stuck in heavy traffic. Attorneys go to

Fairfax Hospital in Kirkland, Northwest Hospital in north Seattle, Cascade Hospital in Burien, and Navos in West Seattle; Auburn Medical Center will soon be added to the mix. This not only leads to extremely long workdays for attorneys, it also affects their work life in other ways: It means they can't walk down the hall to talk to a prosecutor or court manager, have a harder time reaching witnesses for interviews, and have to go to additional effort to learn the status of each case. Adding to this untenable situation is the steady increase in new case assignments in the ITA Court: It's the fastest-growing case area in King County, putting some attorneys at caseloads that exceed recommended standards. (See chart below.)

DPD leadership plans to add attorneys to the civil commitment unit, which will help address the high caseloads. DPD also continues to discuss the problems posed by video hearings with other county leadership, but at this point, no solution is in sight. ❖

Case filings in ITA Court from 2011 to 2015



Source: King County Superior Court

6. Defense counsel's ability, training, and experience match the complexity of the case.

Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.

The Standards for Indigent Defense adopted by the Washington Supreme Court in 2012 delineate the qualifications an attorney must possess for each practice area in this state. (See Standard 14.2, Standards for Indigent Defense, Washington State Courts.) These standards – put in place in large part due to the advocacy of public defenders in King County and elsewhere – are considered to be among the best in the country. DPD's four divisions adhere to these standards, allowing attorneys to practice in various areas of public defense only if they have met the qualifications laid out in Standard 14.2.

The department is taking several steps to ensure attorneys have the experience and training needed to handle certain types of cases. It has begun a robust training program, giving attorneys in every practice area – from dependency to felony – the opportunity to receive relevant, leading-edge training from some of the best practitioners in the country. (See Principle 9 for more information about DPD's training program.) The department is launching a performance review system that will require supervisors to provide regular feedback to their employees, as well as an annual review. The department's case area directors – particularly in felonies and misdemeanors – sit in on trials and other court proceedings to watch attorneys at work, giving them an opportunity to provide attorneys with coaching, trial tips, and more.

Managing attorneys in the four divisions also require attorneys to have demonstrated levels of experience before they take on increasingly complex cases. In misdemeanors, for instance, only attorneys with training and some degree of misdemeanor experience are given DUI cases, which are among the most complex and have the most serious consequences in this case area. In dependencies, new attorneys are not given cases where the termination of parental rights is at stake. In felonies, attorneys start with Class C cases, add on non-strike Class B cases, and ultimately work their way up to Class A felonies. An attorney can represent someone charged with a Class A felony only if he or she has served two years as a prosecutor or public defender and has been trial counsel alone or with another attorney and has handled a significant portion of the trial in three felony cases submitted to a jury. Finally, an attorney can represent a defendant in a death penalty case only if he or she has had at least five years of criminal trial experience, prior experience as lead counsel in at least nine jury trials where the cases were serious and complex, and prior experience in at least one aggravated homicide case.

These requirements are true for the department's assigned counsel, as well.

According to DPD's new assigned counsel policy, "Selection of Assigned Counsel Panel members will be based on experience, training, and demonstrated proficiency in representation and litigation skills as set out in the American Bar Association Criminal Justice Standards for the Defense Function; the National Legal Aid & Defender Association Standards for the Defense; and the Washington State Bar Association Standards for Indigent Defense Services." When complex or difficult cases need to be assigned to outside attorneys, such as the recent murder charges stemming from the death of two people in "The Jungle," the department's case coordinators and assigned counsel director work carefully to make sure those cases are going to skilled and experienced counsel. ❖

Death penalty called into question after three significant cases

King County witnessed a landmark year in death penalty-litigation in 2015. The jury deliberated for less than an hour during the penalty phase in Christopher Monfort's trial before coming back with a unanimous verdict for life in prison without parole (LWOP). A divided jury also handed Joseph McEnroe, who was facing six counts of aggravated murder, a sentence of life in prison. Those two cases spared the life of a third defendant, Michele Anderson; the prosecutor elected not to seek the death penalty after juries declined to sentence Mr. Monfort and Mr. McEnroe to death.

These three cases were handled by attorneys who are highly trained in death penalty litigation and who are among DPD's most gifted litigators. They were assisted by excellent teams that included investigators, mitigation specialists, paralegals, and even one volunteer attorney with death penalty experience. And their work is having profound ramifications. Several opinion leaders – including the Seattle Times editorial board and key lawmakers – are now calling for an end to capital punishment, noting that the decisions by these two juries suggest it is no longer embraced by the public. Efforts to end capital punishment did not make it out of the Legislature in 2016; still, in part because of this history-making year in capital litigation, many think the death penalty will soon be abolished in Washington state.

Leo Hamaji, a public defender, gives his opening statement during the capital trial for Joseph McEnroe last year.

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

Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

Vertical representation is largely observed by DPD except that initial appearances, e.g., arraignment calendars in adult criminal courts (for felonies and misdemeanors), are typically handled by a "calendar lawyer" who does not represent clients after that stage of the case. This has been the practice in King County for decades. DPD, as part of its ongoing re-organization, continues to examine this issue to see if true vertical representation can be achieved.

There are areas of the DPD's practice, however, where vertical representation is not occurring as a means of convenience to the courts and to stay within budget. DPD plans to focus on this issue over the next year. Resolving this issue and providing the level of representation envisioned by the ABA's standards will require DPD's partners in the criminal justice system to work with the department.

In Washington, except in appeals from courts of limited jurisdiction to Superior Court, the State Office of Public Defense contracts with law firms outside of DPD to handle direct appeals. DPD attorneys do handle appeals of decisions from courts of limited jurisdiction (known as RALJ appeals), and, except under unusual circumstances, the attorney who starts the appeal would conclude it. ❖

Edwin Aralica, a felony supervisor in Kent, represents a client in Superior Court.

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.

There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual, or complex cases, and separately fund expert, investigative, and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

The issue of parity is a significant one in public defense, where attorneys and support staff have historically earned far less money than their counterparts in the prosecuting attorney's office, carried heavier workloads, and had fewer tools and resources to do their jobs. Public defenders have been striving for both literal parity – compensation packages equal to those of prosecutors – as well as functional parity – comparable facilities, training opportunities, technological support, and other resources needed to create a level playing field. Public defenders have also sought over the years an equal voice in political and criminal justice circles.

The situation has improved considerably since the four nonprofit agencies have become a part of King County, though parity in every area has not been achieved. What follows is a breakdown of some of the major parity issues and an assessment of the current status.

Compensation

After several months of negotiations, King County signed collective bargaining agreements with two unions – the Service Employees International Union and the Guild – representing the majority of DPD employees. These two CBAs come close to establishing parity in wages, leave, and benefits – or total compensation – between DPD staff and staff in the county's Prosecuting Attorney's Office. Parity was a significant goal in the bargaining process. The introduction of the SEIU contract notes the importance of parity, stating in part that "compensating DPD employees in parity with employees occupying similar positions in the King County Prosecuting Attorney's office (is) essential to the mission of DPD."

The SEIU contract was signed on Nov. 12, 2015, and the Guild contract was signed on Dec. 7, 2015. Both went into effect February 14, 2016.

Assigned Counsel Compensation

Assigned counsel compensation rates in King County are low. According to DPD's finance team, those rates have not changed since 2005, despite a steady increase in the cost of living in the region over the past decade. The department continues to attract skilled attorneys to its assigned counsel panel. Even so, the department believes it is failing to meet the ABA guideline on this issue, which says, in part, "Assigned counsel should be paid a reasonable fee." Now that the department has hired a director of assigned counsel, DPD hopes to address this issue in the 2017-2018 budget.

Other resources: Facilities

DPD's issues with facilities – particularly involving the civil commitment case area – are discussed in other sections of the report. As noted under Principle 5, the implementation of video hearings in ITA Court has triggered a number of parity issues for attorneys in ITA Court, who now have to add hours of drive-time to their days, as well as resource issues (they don't have dedicated confidential space for client/attorney meetings and share offices – two to four attorneys to a room).

Here is a look at other facility-related issues.

Downtown consolidation: Public defense employees continue to work in the former nonprofit agency locations. In downtown Seattle, that means DPD employees are in five different locations, as far north as First and Seneca (the Watermark Building) and as far east as 14th and Jefferson, near the Youth Services Center. For one division's dependency staff, this entails a 20-minute walk (including a steep uphill climb) between their office and the courthouse, where proceedings occur. Ideally, staff in the four divisions and the Director's Office would be consolidated in one downtown building a short distance from the King County Courthouse. Last year – with support from the Department of Executive Services' Facilities Management Division – the county began to focus on the potential redevelopment of the Yesler Building as a site for a consolidated DPD. Planning stalled, however, after it became clear that suitable relocation sites were going to be difficult to find for DAJD's Community Center for Alternative Programs (CCAP) and Community Work Program (CWP), Yesler Building's principal tenants. As a result, FMD is now exploring the use of leased space as a quicker and more cost-effective option for a consolidated location for DPD. FMD, with DPD's participation, is in the process of selecting a broker who will help the county secure a lease close to the King County Courthouse and that will provide sufficient space for all staff serving clients out of the courthouse as well as administrative staff in the Director's Office. This will also entail a move of staff supporting the juvenile practice areas and eventually dependency practice areas to our Jefferson Street facility.

Kent: Many of DPD's employees are in cramped or inadequate space in Kent. The situation grew more challenging in 2015 with the addition of a new NDD felony unit in Kent, a needed expansion due to increasing South King County felony filings. Fortunately, FMD has located a facility near DPD's current Meeker Street Law Building and will be issuing a letter of intent to the landlord in order to proceed with negotiations and build-out of the space. The space is designed to provide room for two case area units for one division, as well as a large conference or training room for DPD's Kent staff. The department hopes to move into the

new location early in 2017. In the meantime, DPD has created additional room in the Meeker Street Law Building for the new NDD unit. The new layout is not ideal, but it has enabled DPD to address its caseload capacity issue in Kent.

Other resources: Technology

Historically, public defenders have had far fewer technological resources than their counterparts in the PAO. In the past year, the situation has improved, though public defenders still have unmet technological needs.

One source of frustration for DPD lawyers has been their dependence on prosecutors for access to audio-video equipment in the courtroom: Prosecutors have state-of-the-art equipment; when they use it in the courtroom, public defenders can ask to use it. DPD, after conversations with attorneys about the kinds of equipment they need, is close to acquiring audio-video equipment for public defense, equipment that the Superior Court has agreed to provide storage space for in both the King County Courthouse and the Maleng Regional Justice Center. The department expects to have this equipment in place this spring.

The department, working closely with King County Information Technology, has also provided all of its attorneys with laptops and is in the process of acquiring lighter laptops for future deployments. The department is also identifying other staff who work directly with clients and who thus need laptops, including social workers, investigators, and some paralegals, and is working to acquire laptops for them, as well. The county has also equipped DPD with its unified communication system, which means employees have remote phone access via their laptops. Wi-Fi problems – another parity issue – have also been addressed. At Seattle Municipal Court, for instance, city prosecutors had Wi-Fi (since they were working within the city system) but the county's public defenders did not. KCIT worked with the city to set up Wi-Fi for SMC defenders.

Many employees continue to express a need for mobile phones. This is not a literal parity issue, since most deputy prosecutors also do not have county-issued mobile phones. But it does touch upon the issue of functional parity: Because public defenders, unlike prosecutors, have clients they need to reach at all hours of the day and to whom they don't want to give their personal phone numbers, the lack of mobile phones hampers their efficiency and effectiveness and is a significant unmet need. DPD currently does not have funding to provide this technology.

Suzanne Pickering represents a client in King County Superior Court, where prosecutors have often had AV equipment that public defenders lack.

Finally, attorneys in the civil commitment practice area have ongoing technological problems that impede their work and raise functional parity issues. In the Walter Scott Brown Building, where ACA's new ITA unit works, attorneys don't have a fax machine in a secure location (which means they often have to stand by the machine and wait for their faxes), voicemail on the office telephone, Wi-Fi, or other needed resources. The department is working to address these problems, but the situation is challenging because of a severe shortage of appropriate facilities near the ITA Court at 9th and Jefferson.

Public defense as an equal partner in improving the justice system

Public defenders in King County have long been strong and zealous advocates for criminal justice reform, but because there were four separate agencies handling public defense, their participation was sometimes cumbersome and not always effective: There was no single coordinated voice advancing the defense position. That is beginning to change now that Lorinda Youngcourt has been in her position for more than a year and has a new leadership team that fully embraces the independence protections afforded by the charter amendment that created the department.

Some important examples of DPD's advocacy in the criminal justice system have already been noted in this report. Here are some additional highlights:

- A member of DPD's leadership team is on the Juvenile Justice Equity Steering Committee (JJESC), established by Executive Constantine. Twyla Carter, DPD's representative on the committee, has played a strong and active role, recommending measures to reduce racial disparity in the juvenile justice system. Ms. Carter, working with other members of DPD staff, recently submitted a pilot project to the JJESC that would provide community-based diversion to children arrested for theft in the third degree, a groundbreaking approach, should it be adopted.
- Lorinda Youngcourt regularly meets with other leaders in the criminal justice system – including Dan Satterberg, the prosecuting attorney, William Hayes, the director of the Department of Adult and Juvenile Detention, and the presiding judges in Superior and District Court and Seattle Municipal Court. These meetings have given her an opportunity to advance several important issues, including confidential telephone lines in the jail, the need to move children who have been "auto declined" from the adult correctional facility into the juvenile facility, and other defense issues.
- Through effective advocacy, DPD staff convinced Superior Court to expand the definition of Tier 2 warrants in the juvenile system, thereby reducing the number of youth put in detention for failures to appear or other warrant violations.
- DPD worked with the County Council to decriminalize youth fare evasion on Metro buses and is currently working with stakeholders to change policies that result in some riders being banned from Metro buses for up to a year. ❖

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

Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.

La Mer Kyle-Griffiths leads a training session for supervisors in the department.

Last year, shortly after becoming the department's director, Lorinda Youngcourt recognized DPD's absence of a comprehensive training program as one of the department's greatest unmet needs. The department offered several continuing legal education classes and encouraged attorneys to take advantage of trainings offered by other organizations, such as the Washington Defender Association. But the approach was scattershot, at best. Ms. Youngcourt was determined to create something else: a state-of-the-art training and career development program that begins when an attorney comes to work for the department and continues through his or her career, that enables attorneys to move from one practice area to another with training and support, and that would lead to the development of DPD's own roster of experts – leaders not only within the department but nationally, as well.

To that end, Ms. Youngcourt recruited La Mer Kyle-Griffiths last summer as DPD's training director and a member of her leadership team, with a goal of launching the department's first comprehensive training program. The program has gotten off to a quick start, with several CLE-eligible trainings for attorneys as well as trainings for employees in other job categories. Though still quite new, the program aims to increase skills for employees at all levels of the organization and in all practice areas through a model of constant personal improvement and department-wide systemic improvement. The development of quality in-house trainings are a key part of the program, though employees will also be encouraged to take advantage of high-quality trainings offered in other parts of the country. Key to the program are "trained trainers" – meaning that those who attend trainings in other parts of the country should also have the skills and commitment to effectively share what they've learned upon their return. Ms. Kyle-Griffiths also envisions a staff-wide commitment to the creation of several shared resources, including manuals, brief banks, articles, and more.

Some of the events that took place in 2015 under Ms. Kyle-Griffiths' program included a training for attorneys new to the Seattle Municipal Court practice, training in Legal Files (DPD's new case management system), and a two-day train-the-trainer course that brought in outside experts in presentation skills. The department also sent attorneys to trainings in other parts of the country, including investigator trainings in Wisconsin and Kentucky. A milestone for the department took place earlier this year, when Ms. Kyle-Griffiths and others in the department put on a daylong, staff-wide training conference called "Creating Harmony," with more than 30 sessions covering a range of topics, including sessions relevant to attorneys in all practice areas, investigators, social workers, paralegals, administrators, and other employees. Nearly the entire department attended the conference. Attorneys were able to earn up to 5.5 CLEs for the day. The event was both ambitious and successful, and the department plans to make this daylong conference an annual event.

But the department still faces some hurdles in the ongoing development of its training program. Adequate training facilities have proven hard to find. And some tension exists when DPD attempts to do a training, since that often means attorneys and support staff have to take a pause from the unrelenting pace of the criminal justice system. It will be imperative that DPD's partners – the courts, in particular – work with the department to accommodate a meaningful training schedule. ❖

'Creating Harmony,' DPD's first all-staff training, brought nearly 375 employees together

DPD's first daylong conference, held on Feb. 26, 2016, brought the department together for training sessions, a banquet, and a keynote address by Jeffery Robinson, who spoke passionately about race and criminal justice in America. More than 30 sessions were held, covering a range of topics – therapeutic courts, customer service, disability and access, eyewitness identification, and more. The day also included a banquet, where the Public Defense Advisory Board received the Polaris Award, a leadership award for its help in guiding this new department.

DPD employees give Jeffery Robinson, a highly regarded criminal defense lawyer who heads ACLU's Center for Justice, a standing ovation after his keynote address. Mr. Robinson is also a member of the Public Defense Advisory Board.

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

The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

The department has focused considerable attention on this issue of both quality supervision and timely and regular performance reviews. Several employees did not receive regular reviews when they worked at some of the nonprofit public defense agencies, and the need to establish a standardized approach became evident shortly after the department was formed. Similarly, many of the supervisors were not trained in how to mentor and review the employees who reported to them, and some had a large number of direct reports, far in excess of the 10-to-1 ratio mandated in the collective bargaining agreement that went into effect in February 2016 between King County and the Guild. (The Guild represents supervisors at DPD.)

Over the last year, the department recruited and selected several new supervisors, ensuring that all case area units were overseen by a supervisor with expertise in that area of law and reducing the number of direct reports. Many supervisors now have only 10 direct reports; in some divisions and case areas, the department has additional organizational work to do to reach the 10-to-1 ratio. The department has also held two trainings for supervisors, giving them information on a wide range of issues, including performance reviews, coaching skills, best practices in communications, and more.

Finally, the department is in the process of developing a new performance review process designed to encourage continuous improvement, enable employees to identify and meet their professional goals, and improve the department's ability to help clients efficiently, effectively, and equitably. The review process is premised on regular communication between an employee and his or her supervisor, including three meetings a year to formally discuss the employee's development and a formal year-end review. This new review process will begin in the first quarter of 2016.

The department's director of assigned counsel has also established a plan for performance review and evaluation of attorneys on the assigned counsel panel. Such evaluations are expected to include direct observation of the attorney in court; interviews with clients, judges, and other counsel, and a review of legal documents by the attorney. ❖