

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

July 18, 2005

Motion 12160

Proposed No. 2005-0092.2

Sponsors Gossett

1 A MOTION adopting the public defense payment model,
2 establishing a framework for budgeting indigent legal
3 defense services in King County, and requesting the
4 executive to transmit for council approval by motion a
5 business case justifying the need to contract with a new
6 agency to handle conflict cases.

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9 WHEREAS, it is declared a public purpose that each citizen is entitled to equal
10 justice under the law without regard for his or her ability to pay, and

11 WHEREAS, King County makes publicly financed legal services available to the
12 indigent and the near indigent person in all matters when there may be a likelihood that
13 he or she may be deprived of liberty pursuant to the law of the state of Washington or
14 King County, and

15 WHEREAS, it is the intention of King County to make such services available in
16 an efficient manner which provides adequate representation at a reasonable cost, and

17 WHEREAS, in Washington state, the cost of providing indigent defense services
18 is primarily the responsibility of counties and cities, and

19 WHEREAS, for over thirty years, King County has provided public defense
20 services by contracting with nonprofit defender organizations formed for the specific
21 purpose of providing legal defense services to the indigent as well as other independent
22 contractors, and

23 WHEREAS, the thirty years of providing indigent defense services by contracting
24 with nonprofit defender organizations and independent contractors has provided King
25 County with sufficient information to understand an appropriate payment model for the
26 provision of such services, and

27 WHEREAS, prior to 2004, the office of the public defender developed its annual
28 budget using budget information provided by the defender organizations. This practice
29 resulted in different payments to each agency for the same type of work, and

30 WHEREAS, in 2004, the office of the public defender developed a funding model
31 that created a uniform payment structure for salaries, benefits and administrative costs
32 across the defender agencies, and

33 WHEREAS, the funding model was used for the first time in the 2004 annual
34 budget and updated for the 2005 budget, and

35 WHEREAS, the defender agencies were not fully informed of the basic
36 assumptions of the funding model, and

37 WHEREAS, during the 2005 budget process, the budget and fiscal management
38 committee heard testimony from the defender agencies expressing concerns regarding the

39 funding model including the lack of transparency and inadequate funding for salaries,
40 benefits and administrative expenses, and

41 WHEREAS, the 2005 executive proposed budget for the office of the public
42 defender included a plan to solicit proposals for a new defender agency to provide
43 indigent defense services for cases that cannot be assigned to existing contract agencies
44 due to an ethical conflict of interest, and

45 WHEREAS, the budget and fiscal management committee heard testimony from
46 members of the public, members of the assigned counsel panel and the defender agencies
47 at four public hearings on the 2005 executive proposed budget expressing opposition to
48 the plan to contract with a new defender agency, and

49 WHEREAS, Ordinance 15083, adopted by the King County council on November
50 22, 2004, encumbers five hundred thousand dollars until the office of the public defender
51 has submitted and the council has approved by motion a report that describes the model
52 used to develop funding levels for public defense contracts and describes an option for
53 the provision of indigent defense services for cases that cannot be assigned to existing
54 contract agencies due to an ethical conflict of interest, and

55 WHEREAS, the motion and the report required by Ordinance 15083 was due on
56 January 14, 2005, and submitted to the council on February 23, 2005, and

57 WHEREAS, Ordinance 15151 adopted by the King County council on April 18,
58 2005, approved a supplemental appropriation for the office of the public defender in the
59 amount of \$2,116,095 solely for one-time 2005 transition funding for public defense
60 contract agencies, and

61 WHEREAS, since January 2005, the directors of the defender agencies have been
62 meeting weekly with staff of the office of the public defender to discuss and provide
63 input on refinements to the financial model for 2006 and beyond; and

64 WHEREAS, in April 2005, staff from the council and the office of management
65 and budget have attended the weekly meetings and have been working collaboratively
66 with the defender agencies to refine the funding model for 2006 and beyond.

67 NOW, THEREFORE, BE IT MOVED by the Council of King County:

68 1. **Model Adoption.** The council hereby adopts the Public Defense Payment
69 Model set out in Attachment A to this motion. The Public Defense Payment Model is the
70 analytical framework for calculating the costs to provide indigent defense services in
71 order to guide preparation of the proposed annual appropriation for public defense and to
72 structure contracts for indigent defense services. The Public Defense Payment Model is
73 not intended to and does not in any way alter the relationship between King County and
74 the nonprofit agencies with which King County contracts, namely that the agencies are
75 independent contractors to King County. The annual proposed budget for indigent
76 defense services shall be developed based on the Public Defense Payment Model. The
77 financial components of the model and any executive-proposed changes to the model
78 shall be submitted with the proposed appropriation ordinance for the ensuing budget year.

79 2. **Model Policies.** The council hereby approves the following policies of the
80 financial model contained in Attachment A to this motion.

81 A. **Uniform Cost Structure.** The purpose of the model is to provide a
82 framework for creating a uniform basis of payment that is consistent across all contract
83 agencies providing indigent legal defense services. The model results in four basic

84 payment points: (1) a price per credit that includes salaries for attorneys, supervisors and
85 support staff, FICA, benefits, and case-related overhead costs; (2) an administrative and
86 overhead rate that covers administrative staff and operational costs; (3) a rent allocation
87 and 4) calendar costs represented as a cost per specific calendar assignment.

88 **B. Parity.** The model shall budget payment for public defender attorney
89 salaries at parity with similarly situated attorneys (where positions budgeted in the model
90 are in comparable classifications with comparable duties and responsibilities) in the
91 office of the prosecuting attorney. For the purposes of the model, "salary" means pay
92 exclusive of benefits. Parity means that public defender attorney salaries shall be
93 comparable to the salaries of those similarly situated attorneys in the office of the
94 prosecuting attorney. The office of the public defender shall be responsible for tracking
95 and updating public defender attorney salaries annually in the Kenny Salary Table. The
96 Kenny Salary Table shall be updated annually to account for cost of living adjustments,
97 step increases for non-senior level attorneys and parity increases for all attorney levels
98 including seniors and supervisors.

99 **C. Transparency.** The model's detailed framework is intended to make clear
100 how the proposed budget for indigent legal defense services is developed. It is not
101 intended that the detailed components of the model establish expenditure requirements by
102 the independent contract agencies. Each independent contractor has discretion to use the
103 monies provided under contract with the county in any manner as long as they are used to
104 execute the contract. It is intended that the model be updated every three years follows:
105 2006 is Year 1; 2007 is Year 2; 2008 is Year 3. The model shall be updated and revised
106 as needed for the 2009 budget.

107 **3. Assigned Counsel Costs.** The council acknowledges the escalating
108 expenditures for assigned counsel and the need for the county to implement measures to
109 control these costs. The council hereby requests the executive to delay soliciting
110 proposals for a new agency to accept conflict cases until the executive has transmitted
111 and the council has approved by motion a business case that provides a description of and
112 a justification for a new agency. The business case shall include actual assigned counsel
113 expenditures from 1998 to 2005, targets for 2006 to 2008, a review of cases assigned to
114 counsel outside the public defender agencies to determine if the cases were assigned
115 because of an ethical conflict or for some other reason and a cost/benefit analysis that
116 shall analyze if savings can be achieved by contracting with a new agency to handle
117 conflict cases. The motion adopting the business case shall be transmitted to the council
118 no later than May 1, 2006.

119 The motion and business case must be filed in the form of 15 copies with the clerk
120 of the council, who will retain the original and will forward copies to each

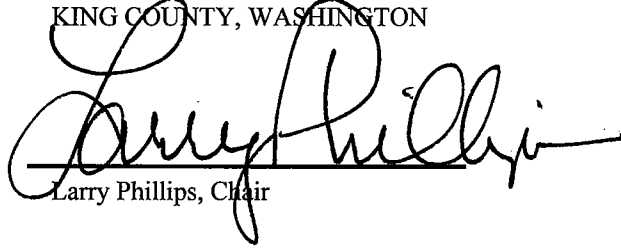
Motion 12160

121 councilmember and the lead staff of the budget and fiscal management committee or its
122 successor.
123

Motion 12160 was introduced on 2/28/2005 and passed by the Metropolitan King County Council on 7/18/2005, by the following vote:

Yes: 13 - Mr. Phillips, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Pelz, Mr. Dunn, Mr. Ferguson, Mr. Hammond, Mr. Gossett, Ms. Hague, Mr. Irons, Ms. Patterson and Mr. Constantine
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Phillips, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments A. Public Defense Payment Model for General Fund Expenses for Indigent Public Defense Services in King County, dated July 13, 2005

Public Defense Payment Model for General Fund Expenses for Indigent Public Defense Services in King County

This model shall be used as the framework to develop the Executive's proposed annual budget for indigent legal defense services. An indigent defendant is a person determined indigent by the County, the County's Office of the Public Defender or Court as being eligible for a court-appointed attorney, pursuant to RCW 10.101. The purpose of the model is to create uniform rates to be paid to contract agencies providing indigent legal services for direct expenses including salaries and benefits and indirect expenses including overhead and administrative costs.

STEP 1: Project the Annual Caseload Credit Volume

The model begins with an annual estimate of the number of case credits in six case areas. Each type of case shall be assigned a number of case credits. A case credit represents the amount of attorney work required. The total number of credits that each attorney is expected to perform annually, known as the "caseload standard," is listed below.

<u>Case Area</u>	<u>Caseload Standard</u>
• Complex felony (e.g. death penalty, homicide cases)	150 credits
• Regular felony	150 credits
• King County misdemeanor	450 credits
• Juvenile	330 credits
• Dependency	180 credits
• Contempt of court	225 credits

STEP 2: Calculate the Price Per Credit for Each Case Area

The model budgets for legal services on the basis of a price per credit for each of the six case areas. The components listed below are calculated to arrive at the price per credit:

A. Salaries

1. Attorney Salaries
2. Supervisor Salaries
3. Non-legal Professional Support Staff Salaries
4. Clerical Staff Salaries

B. FICA (Social Security + Medicare Taxes)

C. Benefits

D. Direct Overhead Costs Related to Legal Practice

1. Legal Staff
2. Non-Legal Staff

A. Salaries

1. Attorney Salary: The model budgets public defender attorney salaries at parity with similarly situated attorneys (where positions budgeted in the model are in comparable classifications with comparable duties and responsibilities) in the Office of the Prosecuting Attorney. For the purposes of the model, salary means pay exclusive of benefits. Salaries are tracked and updated annually by the Office of the Public Defender in the Kenny Salary Table. The attorney salary price per credit is based on the weighted average of salaries for attorneys in the 2005 system taking into account parity increases, an annual COLA¹ increase, an annual step increase for public defender level attorneys through level 4.6 and an annual attrition rate. The weighted average of attorney salaries shall be re-calculated every three years with 2006 as Year 1; 2007 as Year 2; 2008 as Year 3.

$$\frac{(\text{Weighted Average Attorney Salary})}{\text{Caseload Standard}} = \text{Attorney Salary Price Per Credit}$$

2. Supervisor Salary: The model funds the contract requirement of each defender agency to provide a ratio of 0.1 supervisors for each attorney. The supervising attorney salary price per credit calculation is based on the weighted average of salaries for supervisors in the 2005 system, salary parity and an annual COLA increase. The weighted average of supervisor salaries shall be re-calculated every three years as indicated above.

$$\frac{(\text{Weighted Average Supervisor Salary}) \times 0.1}{\text{Caseload Standard}} = \text{Supervisor Salary Price Per Credit}$$

3. Non-Legal Professional Support Staff Salaries: The model funds the contract requirement of each defender agency to provide sufficient professional support staff (social worker, investigator and paralegal) for each attorney. The non-legal support staff salary price per credit is based on the average market rate for paralegals, investigators and social workers taking into account the percentage distribution of FTEs in the three non-legal staff categories in the 2005 system. The model payment standard is 0.5 professional support staff per attorney with an annual COLA increase.

$$\frac{(\text{Weighted Average Non-Legal Staff Salary}) \times 0.5}{\text{Caseload Standard}} = \text{Non-Legal Salary Price Per Credit}$$

4. Clerical Staff Salaries: The model funds the contract requirement of each defender agency to provide sufficient clerical staff for each attorney. The clerical staff salary price per credit is based on the average market rate for clerical staff taking into account the salary distribution of clerical staff in the 2005 system. The model payment standard is 0.25 clerical staff per attorney with an annual COLA increase.

$$\frac{(\text{Clerical Staff Salary}) \times 0.25}{\text{Caseload Standard}} = \text{Clerical Salary Price Per Credit}$$

¹ COLA = Cost of living adjustment. The model uses the same COLA rate applied to most County employees; the COLA increase is 90% of the change in the September to September national consumer price index (CPI-W), with a floor of 2.00%.

B. FICA (Social Security + Medicare Taxes): Employers are required to pay 6.2 percent in Social Security and 1.45 percent in Medicare payroll taxes for each employee, for a total of 7.65 percent.

$$(A1+A2+A3+A4) \times .0765 = \text{FICA Cost Per Credit}$$

C. Benefits: The model budgets for benefits based on the 2003 benefit amount per agency FTE inflated annually at the rate of inflation experienced by the county flex benefit plan. The model does not prescribe the type of benefits contract agencies provide to their employees.

1. **Calculate the Benefit Allocation per FTE.** The projected inflation rate will be adjusted in the following year to reflect the actual inflation rate.

$$(2003 \text{ benefit amount per FTE}) \times (2004 \text{ actual inflation rate}) \times (2005 \text{ actual inflation rate}) \times (2006 \text{ projected inflation rate}) = 2006 \text{ Benefit Allocation Per FTE}$$

2. **Calculate the Benefit Price per Credit.**

$$\frac{(\text{Benefit Allocation per FTE}) \times (1.85^2)}{\text{Caseload Standard}} = \text{Benefit Price Per Credit}$$

D. Direct Overhead Allocation Related to the Practice of Law

1. Calculate the Legal Staff Overhead Allocation and Price per Credit: The model budgets this allocation on a rate-per-attorney basis using 2005 system costs as a baseline taking into account the following categories: liability insurance, licenses, continuing legal education, memberships and dues, library costs, computer desktop replacement, and parking and mileage for investigators and attorneys. A COLA increase is applied annually.

$$\text{A. } \frac{\text{Legal Staff Allocation}}{\text{Number of Attorneys}} = \text{Legal Admin Rate per Attorney}$$

$$\text{B. } \frac{\text{Legal Admin Rate per Attorney}}{\text{Caseload Standard}} = \text{Legal Admin Rate Price per Credit}$$

2. Non-Legal Staff Overhead Allocation and Price per Credit: The model budgets this allocation on a rate-per-FTE basis for investigators, social workers and paralegals using 2005 system costs as a baseline taking into account the following categories: liability insurance, licenses, training and education, memberships and dues, library and desktop replacement. A COLA increase is applied annually.

$$\text{A. } \frac{\text{Non-Legal Staff Admin Allocation}}{\text{Number of Non-Legal FTEs}} = \text{Non-Legal Staff Admin Rate per FTE}$$

$$\text{B. } \frac{\text{Non-Legal Staff Admin Rate per FTE}}{\text{Caseload Standard}} = \text{Non-Legal Admin Rate Price per Credit}$$

STEP 3. Calculate the Total Price Per Credit

² 1.85 = 1 attorney; 0.1 supervisor; 0.5 non-legal staff; and 0.25 clerical staff.

A separate price per credit is calculated for each case area taking into account differing attorney levels assigned to each case area.

$$\text{Salaries (A1+A2+A3+A4) + FICA (B) + Benefits (C) + Legal and Non-Legal Staff Administrative (D1B + D2B) = Total Price Per Credit}$$

STEP 4. Indirect Administrative and Overhead Allocations

For indirect administrative/overhead costs including office operations, capital equipment purchases and leases and other agency-related costs and for agency administration, the model uses a percentage rate which is to be derived from the 2003 rate of administrative/ overhead costs to total direct expenditures (caseload and calendar related salaries, benefits, FICA, and legal-related administrative expenses). Adjustments may be made to the rate to accommodate for business process changes which may occur from time to time. Each contract agency will be allocated a percentage share of the total allocation based upon the agency's share of the total system direct costs.

$$(\text{Total direct expenditures}) \times \% \text{ Rate} = \text{Total Indirect Admin/Overhead Allocation}$$

STEP 5. Rent Allocation:

A. Calculate the number of FTEs required to manage the annual caseload volume as follows:

1. Attorneys: calculated directly from the caseload standards and calendar tables
2. Supervisors = (# of attorneys) x 0.1
3. Non-legal professional and clerical support = (# of attorneys) x 0.75
4. Administrative staff

B. Calculate the estimated square footage per contract agency as follows:

1. Assign each personnel category above in A1-4 an appropriate square footage allocation not to exceed the Executive's 2004 proposed county space standards. For the investigator position, the model uses the City of Seattle space standards, Version 1.2000;
2. Multiply the FTE in each category by the square foot allotment;
3. Apply an allocation for special spaces such as storage, lunch rooms, and conference rooms; and
4. Calculate the circulation allowance for commons areas, restrooms and hallways not to exceed current county policy of 0.25 percent as follows: $(B2 + B3) \times 0.25$.

$$(B2 + B3 + B4) = \text{Total Square Footage}$$

C. Calculate the total rent allocation:

1. The cost per square foot shall be based on a rolling three-year market average cost per square foot (including operating costs) for Class B office space in two locations (the model may take into account market fluctuations or escalator provisions in existing leases):
 - 1) Downtown Seattle – Central Business District; and
 - 2) Kent – within reasonable proximity to the Regional Justice Center.

$$(\text{Average Cost Per Square Foot}) \times (\text{Total Square Footage}) = \text{Total Rent Allocation}$$

ATTACHMENT A

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2. Each contract agency will be allocated a share of the rent amount based upon the agency's share of the total system FTEs in each of the two locations.

STEP 6: Calendar Attorney and Staff Allocation

- A. Compile the list of court calendars to be assigned to each attorney.
- B. Calculate the costs for salaries, FICA and benefits for attorneys, supervisors and non-legal staff assigned to calendar duty as follows:
 1. Number of Attorney FTEs x Attorney Salary per FTE = Total Attorney Cost
 2. Number of Supervisor attorneys x Supervisor Salary per FTE = Total Supervisor Cost
 3. Number of Staff FTEs x Non-Legal Support Staff Salary per FTE = Total Non-Legal Staff Cost
 4. (Total Attorney Cost + Total Non-Legal Staff Cost) x .0765 = FICA Cost
 5. (Total Attorney and Non-Legal Staff FTEs) x (Per FTE Benefit Allocation) = Benefit Cost

- B. Calculate the total cost for calendar attorneys and staff as follows:

$$(A1) + (A2) + (A3) + (A4) = \text{Total Calendar Allocation}$$

Each contract agency will be provided with an allocation directly related to the specific calendars they have been assigned.