



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 15, 2010

Motion 13187

Proposed No. 2010-0078.1

Sponsors Dunn, Patterson and Ferguson

1 A MOTION accepting a report regarding the effects of the
2 prosecuting attorney's office 2010 budget reductions upon
3 the public defense payment model.

4 WHEREAS the 2010 Budget Ordinance, Ordinance 16717, Section 51, Proviso
5 P2, requires the office of the public defender to not expend or encumber \$562,968 until
6 "the council accepts by motion the report that identifies how the prosecuting attorney will
7 address staffing and compensation resulting from budget reductions," and

8 WHEREAS the proviso requires the report to be developed by "the executive, in
9 conjunction with the prosecuting attorney" and to "identify how the prosecuting attorney
10 will address staffing and compensation resulting from budget reductions" and the "effect
11 of the prosecuting attorney's office decision upon the public defense payment model,"
12 and

13 WHEREAS the executive has transmitted to council a report complying with the
14 requirements of the proviso;

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

16 The King County council hereby accepts the report regarding the effects of the

- 17 prosecuting attorney's office 2010 budget reductions upon the public defense payment
18 model, Attachment A to this motion.

Motion 13187 was introduced on 2/1/2010 and passed by the Metropolitan King County Council on 3/15/2010, by the following vote:

Yes: 6 - Ms. Drago, Mr. Phillips, Mr. Gossett, Ms. Patterson, Ms. Lambert and Mr. Dunn

No: 0

Excused: 3 - Mr. von Reichbauer, Ms. Hague and Mr. Ferguson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Robert W. Ferguson, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments: A. Department of Community and Human Services--Office of the Public Defender--2010 Budget Proviso Response--January 28, 2010



King County

**Department of
Community and Human Services**

Office of the Public Defender

2010 Budget Proviso Response

January 28, 2010

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Executive Summary

Metropolitan King County Council 2010 Budget Ordinance 16717 provides for a continuation of the 2009 - 2010 contracts between The Office of the Public Defender and Associated Counsel for the Accused, Northwest Defenders Association, Society of Counsel Representing Accused Persons, and The Defender Association, for legal representation of indigent persons.

The King County public defense contracts define these firms as independent contractors, per the definition in the case law of Washington State law and the county has retained all legal rights to monitor them and set contract requirements. However, the county remains fundamentally obligated to clients for provision of legal services mandated under the U.S. and Washington State Constitutions and other laws.

The total amount of reimbursement included in the contracts results from the application and update each year of the Public Defense Payment Model (Model), approved by the King County Council Motion 12160 in 2005, and revised by Motion 13004 in 2009. The purpose of this Model is to create a common basis of payment that is consistent across all contractors.

This report is in response to the following proviso contained within the 2010 Budget Appropriation Ordinance 16717:

Of this appropriation, \$562,968 shall not be expended or encumbered until the executive, in conjunction with the prosecuting attorney, develops a report and the council accepts by motion the report that identifies how the prosecuting attorney will address staffing and compensation resulting from budget reductions and what the executive identifies as the effect of the prosecuting attorney's office decision upon the public defense payment model.

The report required to be submitted by this proviso must be transmitted to the council by January 28, 2010, and filed in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers and to the committee coordinator for the budget and fiscal management committee or its successor.

Department of Community and Human Services staff and Office and the Office of Management and Budget have had discussions with the Prosecuting Attorney's regarding this proviso and have received confirmation that the mechanism the Prosecuting Attorney's Office will use to address budget reductions will not affect the salary parity calculation in the Public Defense Payment Model.

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Introduction

The basic principles that govern King County's approach to public defense services start with a commitment to a quality public defense system. The 2009 - 2010 budget level and current Public Defense Payment Model (Model) are evidence of this commitment.

- King County accepts the responsibility to provide, account for and manage the public defense program.
- King County acknowledges the commitment and dedication of past and present contractor board members and staff and asserts that the long standing quality of our program can be attributed in large measure to their efforts and collaboration.
- King County recognizes that public interest and the considerations of private non-profit corporations may diverge. The fact that public and private interests may diverge does not detract from the commitment and contributions public sector or private sector individuals have made to the public system.
- King County recognizes the responsibility to ensure the smooth and unhindered functioning of public defense within the criminal justice system.
- King County embraces its duty to make the best and most efficient use of public funds.

Background

Ordinance 16717 provides for continuation of funding for contracts between The Office of the Public Defender (OPD) and Associated Counsel for the Accused, Northwest Defenders Association, Society of Counsel Representing Accused Persons and The Defender Association, referred to in this report collectively as the "contractors," for legal representation of indigent persons. This ordinance is in compliance with King County Code 2.60.040 which provides that "The county executive may enter into agreements with nonprofit corporations formed for the specific purpose of rendering legal services on behalf of indigents to provide legal services to persons eligible for representation through the public defense program. All such contracts entered into by the county executive shall be subject to approval by the county council."

The total amount of reimbursement included in the contracts results from the application and update each year of the Model, approved by the King County Council Motion 12160 in 2005, and revised by Motion 13004 in 2009. The allocation for each case area is calculated to provide funding for public defender salaries at parity with similarly situated attorneys in the Prosecuting Attorney's Office (PAO).

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Public Defender Budget and Payment Model

Overview

The purpose of the Model is to create a common basis of payment that is consistent across all contractors based on contractor costs.

The Model was developed for initial use during the 2006 budget development and then to structure the payment amounts in the 2006 contracts and for subsequent years.

The Model includes three basic components. First, a uniform price per credit¹ is calculated for each caseload area (this includes salaries, benefits, direct overhead and mileage costs for all staff working directly on cases). Second, administrative/indirect overhead allocation rates are calculated to cover salaries and benefits, etc. for administrative personnel (management positions/non-direct case positions such as receptionist) and general office operations costs, excluding rent. Third, a rent allocation is calculated based on the number, location and function of full time equivalent (FTE) staff.²

Annual budget development begins with the estimation of annual caseload volume for each caseload area for the next year and with the annual adjustment to the Model for cost of living allowance (COLA) for attorneys, staff and administration/indirect overhead categories³, and attorney salary parity with the PAO. The Model is applied to the projected caseload numbers and results in an estimated budget need for each caseload area and for contractor administration and overhead.

Each contract is structured to identify the number of case credits anticipated to be performed in each assigned case area for each contractor. The Model is used to calculate the amount to be paid to each contractor for each case area and for administration/overhead and is identified separately in the contract. The rates paid per unit of work (credit) in each case area and per FTE for administration/overhead are common to all contractors.

Model details

The price per credit for a given caseload area is calculated by adding the attorney cost, the support staff cost and the benefit costs and then multiplying the total by the number of case credits projected for the year. The derivation of cost components is described below:

¹ Case credit has been used as the Public Defense unit of work for many years. It does not necessarily equal an individual case, but is more equal to the attorney workload on a case type. Some case assignments receive more than one credit.

² Strictly speaking, the "price per credit" includes only the first component. However, in daily usage, often, the second and or third components are broken down and figured into a system wide "price per credit." The agency contracts break out the three components: the contract payment section states a monthly payment for each case type (calculated by multiplying number of credits times the first component "price per credit." In addition, the contract payment section states the agency administration and overhead (the second component) and rent (the third component).

³ Administrative and indirect overhead is based on a percentage of direct costs; COLA impacts direct costs.

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1. Attorney component. This component of the Model is structured to provide the number of attorneys necessary to handle the annual projected caseload volume in each case area. The Model further acts to ensure that funds are sufficient to provide the appropriate level of attorney (e.g., experience, training, capability) for each caseload. The tools used in deriving the attorney cost component are:
 - Kenny Salary Schedule, inflated by the adopted COLA percentage rate, which ensures the public defense attorney salary to be at parity with the PAO, and adjusted to reflect average attorney salary level changes in the PAO
 - A distribution of attorney qualification levels determined to sufficiently meet the demands of a particular caseload area as well as providing for the rotation of an attorney among other practice areas, and as reflected in the qualification levels of attorneys in the PAO
 - Caseload standards for each caseload area
2. Supervising attorney component. This component of the Model is structured to provide the number of supervising attorneys necessary to administer and mentor the caseload attorneys assigned in each case area. The Model further provides a one attorney supervisor to ten attorneys (a 0.1 ratio to each caseload attorney) and ensures that senior level attorneys act as supervising attorneys as measured by their experience, training, and capability for each case area. The tools used in deriving the attorney cost component are:
 - Kenny Salary Schedule, inflated by the adopted COLA percentage rate which ensures the senior public defense attorney salary to be at parity with the senior PAO, and adjusted to reflect average attorney salary level changes in the PAO
 - A distribution of attorney qualification levels determined to sufficiently meet the demands of a particular caseload area as well as providing for the rotation of an attorney among other practice areas, and as reflected in the qualification levels of attorneys in the PAO
 - Supervising attorney ratio of 0.1 per caseload attorney in each case area
 - Caseload standards for each caseload area
3. Support staff component
 - Paraprofessional (includes combination of paralegal, social worker and investigator staff) at 0.50 ratio per attorney
 - Clerical at 0.20 per attorney

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Update used for 2010 budget

Per the Model, the adjustments necessary for the first half of 2010 are listed as follows:

1. Salary

- The Kenny salary scale updated for COLA (at county salary rate of two percent) and other changes to match PAO staffing and salary levels
- Factor a step increase into the attorney distribution model for attorney levels 1.1 to 4.6, to be adjusted as necessary after analysis of the January 2010 payroll reconciliation of the PAO attorney salaries

2. Direct Overhead

Apply the county COLA to the current rate per attorney and staff FTE

3. Direct Overhead – Mileage

Apply the current King County mileage rate

4. Rent

- Calculation based on combination of rolling three year average caseload and the relative caseload percentage distribution between the contractors to arrive at overall square footage
- Cost per square foot based on rolling three year average cost for applicable office space, as spelled out in Motion 13004

5. Administrative and Indirect Overhead

Administrative and Indirect Overhead costs are calculated, as outlined in Motion 13004

Other Technical Adjustments Made in the Development of the 2010 Amendment

The 2010 Executive Proposed Budget included the following additional updates, changes and revisions to the Model:

1. Reduced felony and misdemeanor case projections as reflected in the budget to account for reduced regular felony budget and for misdemeanor annexation adjustments
2. Funded Becca cases solely with Superior Court state Becca grant funding
3. Included expanded specialty court funding under the Mental Illness and Drug Dependency (MIDD) funding, and supplanted existing specialty court public defense

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costs for Mental Health Court, Drug Diversion Court, and Juvenile Drug Court with MIDD funding

Description of PAO budget savings strategy for 2010 budget reductions

The 2010 Adopted Budget for the PAO includes a contra of \$534,256. The PAO has stated that it will manage this contra without implementing a shut down of operations or other means that will affect the rate of pay of its attorneys. The PAO efforts to manage the contra will have no impact on how salary parity is calculated in the Public Defense Payment Model.

Because the proviso in the OPD budget restricted the expenditure and encumbrance of \$562,968 in funds for the defense contracts, OPD amended each defense contractor contract, effective January 1, 2010, to spread a reduction equivalent to the restricted amount among the defense contractors. Should the King County Council approve this report by motion and release the expenditure restriction, OPD will amend the contract again to restore the previous reduction of \$562,968 that was restricted by the proviso.