



KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

June 20, 2011

Motion 13499

Proposed No. 2011-0220.1

Sponsors Ferguson

1 A MOTION accepting the report prepared by the office of
2 performance, strategy and budget in the executive office on
3 the contempt of court public defense staffing model
4 implemented in January 2011, as required in the 2011
5 Budget Ordinance, Ordinance 16984, Section 18, Proviso
6 P1.

7 WHEREAS, the 2011 Budget Ordinance, Ordinance 16984, Section 18, Proviso
8 P1, requires acceptance by motion of a report addressing changes to contempt of court
9 public defense staffing, and

10 WHEREAS, the office of performance, strategy and budget worked
11 collaboratively to produce such a report with representatives from the office of the public
12 defender, superior court, the prosecuting attorney's office, defense agencies and council
13 staff, and

14 WHEREAS, the executive has responded to the proviso by transmitting to the
15 council with this motion a report on the changes made to contempt of court public
16 defense staffing, and

17 WHEREAS, the report includes discussion of process measures necessary to
18 assess the viability of the new contempt of court defense staffing model;

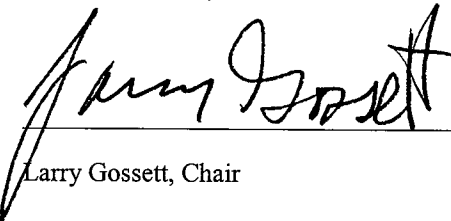
19 NOW, THEREFORE, BE IT MOVED by the Council of King County:

20 The report describing public defense staffing at contempt of court hearings
21 prepared by the executive and provided as Attachment A to this motion is hereby
22 accepted and meets the requirements of Ordinance 16984, Section 18, Proviso 1.
23

Motion 13499 was introduced on 5/9/2011 and passed by the Metropolitan King
County Council on 6/20/2011, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Ferguson, Mr. Dunn and Mr.
McDermott
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments: A. Contempt of Court Defense Proviso Response April 2011

Contempt of Court Defense Proviso Response

April 2011

In response to Proviso 1 in Section 18 of the 2011 Adopted Budget, Ordinance 16984, this report describes the public defense staffing model for child support contempt of court cases implemented in January 2011 and discusses measures taken to ensure that the new system is operating efficiently. The elements of this report required by the proviso are given below.

The office of performance, strategy and budget, working with representatives from the office of the public defender, superior court, the prosecuting attorney's office, defense agencies and council staff, shall collaboratively review the contempt of court services model and shall prepare a report that includes, but is not limited to, a detailed description of the newly implemented public defense staffing model for handling family support contempt of court cases, including descriptions of defender agency staff responsibilities and how the county will track process measures such as numbers of cases, numbers of continuances, number of staff assigned and any other measures necessary to evaluate the process. The report shall include any recommendations to amend the processes in order to maintain services, to reduce costs or to allow for the more-effective use of existing resources

In order to address the issues required by the proviso, the Office of Performance, Strategy, and Budget (PSB) convened a workgroup composed of representatives from PSB, defense contractors, Superior Court, the Office of the Public Defender (OPD), the Department of Judicial Administration, council staff, the Executive's Office, and the Prosecuting Attorney's Office. This group met three times between November 2010 and April 2011 and conducted numerous informal discussions by email and telephone.

Change to Contempt of Court Public Defense Staffing and Payment Model

In response to budgetary pressure that resulted in countywide cuts, defense contractors suggested during the Council phase of the 2011 budget process that savings could be found by changing the staffing and payment model for public defense in child support contempt of court cases. In the prior system, the OPD assigned cases to contractors and paid them for credits earned based on the number of hearings they appeared at for their clients. Under this payment and staffing model, OPD incurred costs of about \$2.3 million procuring contempt of court defense in 2010, and anticipated costs of nearly \$2.5 million in 2011. In the new model implemented in 2011, contractors provide contempt of court defense on an attorney-of-the-day basis in which OPD pays for an agreed staffing level and the contractors provide defense at the specified contempt calendars. As shown in Table 1, this change resulted in savings of about \$1.5 million in 2011.

Table 1. Contempt of Court Defense Costs

2010 Actual Costs	2011 Proposed (Anticipated costs prior to change)	2011 Adopted (Planned costs after change)	2011 Savings
\$2,302,826	\$2,488,906	\$985,373	\$1,503,533

Contempt of court defense is provided by three of four firms that contract with the County to provide public defense services. Under the new payment and staffing model, Society of Counsel Representing Accused Persons (SCRAP) and Northwest Defenders' Association (NDA) provide contempt of court defense at the King County Courthouse in Seattle at the Monday, Wednesday, and Thursday afternoon contempt calendars. Associated Counsel for the Accused (ACA) provides defense at the Tuesday morning and afternoon contempt calendars at the Maleng Regional Justice Center in Kent.¹ In the new staffing model, all three firms are also required to provide defense to in-custody contempt of court defendants, which may appear on calendars other than the ones specified.

As shown in Table 2, the total number of attorneys provided by the defense contractors to represent contempt of court clients declined from 7.0 FTEs in 2010 to 3.0 FTEs under the new model implemented in 2011. Under both the old staffing model and the new model, SCRAP provided additional courtroom attorneys on an as-needed basis. This reduction in attorney staffing is partially compensated by an increase in the number of paralegal FTEs dedicated to contempt of court defense from 2.5 in 2010 to 6.0 in 2011. By performing some of the client contact and other work previously performed by attorneys, these additional paralegals enable the remaining attorneys to focus more of their time on the legal work that can only be performed by attorneys.

Table 2. 2010 and 2011 Contempt of Court Staffing by Defense Contractor

	2010 Staffing		2011 Staffing	
	Attorney FTEs	Paralegal FTEs	Attorney FTEs	Paralegal FTEs
Seattle				
SCRAP	6.0	1.0	1.0 (Plus additional courtroom support as needed)	2.0
NDA	2.0	0.5	1.0 (2 x 0.5)	2.0
Kent				
ACA	3.0	1.0	1.0	2.0
Total				
	11.0	2.5	3.0	6.0

Initial Assessment of Change to Contempt Defense Model

The attorney-of-the-day staffing model was implemented by ACA in Kent on January 3, 2011 and by SCRAP and NDA in Seattle on January 18, 2011. At the contempt workgroup meeting of February 18, 2011, the parties discussed how the system was working after its first month and noted their concerns going forward.

Defense Contractors

In Seattle, the change in the staffing model resulted in SCRAP shifting nearly 20 percent of their prior caseload to NDA. NDA said that despite this increased caseload the system was working for them. NDA noted that the reason the staffing change had gone smoothly was that they were able to staff it with two senior attorneys who each devote half their time to the contempt calendar and half their time to the District Court expedited calendar. According to NDA, if the court schedules were to change so that it

¹ In addition to the Tuesday morning and afternoon contempt calendar in Kent, there is also a Wednesday afternoon adjustment calendar at which contempt cases are frequently heard.

was no longer possible to staff them in this way, it would be more difficult to maintain the quality of public defense expected by the County.

SCRAP reported that after transitioning down to 1.0 attorney FTE, they found they still needed extra courtroom help at times. For example, if there are four or five contested hearings on a calendar it is too much for a single attorney and they assign an additional attorney to provide assistance. The single attorney they have assigned to contempt defense also covers cases filed by private parties rather than the state, although this is an agency staffing decision outside the calendar staffing model.² They reported that they gain efficiency by having two paralegals assigned to contempt of court.

Reporting on implementation of the new contempt staffing model in Kent, ACA stated that they were able to fulfill their obligation, but that the stress level was high. ACA is solely responsible for the calendar in Kent and staffs it with a single attorney. Typically on the contempt calendar, relatively few contested hearings are held because prosecuting and defense attorneys are able to come to agreement on cases before they are heard. However, if there is only one defense attorney in the courtroom this is much more difficult because there is no one present to negotiate upcoming cases with the prosecution while another case is being heard. Similarly, when there is only one defense attorney present it is more difficult for the defense to discuss matters with their client prior to a case being heard. Unlike the way NDA staffs contempt in Seattle, there is not a way to balance contempt with another calendar so that there can be two attorneys dedicated half time to contempt of court defense.

Prosecuting Attorney's Office (PAO)

The PAO reported that from their perspective the change in contempt of court defense staffing has gone very smoothly in Seattle. In addition to the change in defense staffing, the PAO reinstated the practice of focusing more on connecting defendants to services and employment than on in-court admonishments. This has been the practice in Kent for years, but they had moved away from this practice in Seattle. As a consequence, they reported that there are now typically fewer hearings per case than there were in the first three quarters of 2010.

According to the PAO, the change in defense staffing has been challenging in Kent because there is only one defense attorney present and he or she is unable to multitask. For example, the prosecutors must stop the hearings in order to go over warrants with defense because there is not another defense attorney present to negotiate with. This creates inefficiencies, and the morning calendar in particular usually goes right up until the end of the allotted time. From the PAO's perspective, while not ideal, the defense staffing level in Kent is still manageable.

Superior Court

² In addition to the child support enforcement contempt of court cases that are the subject of this report, OPD also contracts for defense for a small number of private non-child support contempt of court cases in family law matters. These cases are not covered by the contempt of court staffing model discussed here and continue to be paid by credits earned on a per-hearing basis.

Superior Court reported that the change in defense staffing has been seamless from the Court's perspective. According to Superior Court, there were no instances of hearings going over the allotted time or where cases were postponed to the next calendar because of insufficient time. As of February 18, 2011, there had been three instances of staff using overtime to complete paperwork after the calendar had ended, one of which was due to other items on the calendar. Of the two overtime instances due to the contempt calendar, one was for 4 minutes and one was for 15 minutes.

Indicators for Future Monitoring of Contempt Defense Model

Because defense resources for the contempt of court caseload area were reduced by more than half, defense contractors and County officials want to monitor contempt cases to determine whether the same level of service for defendants can be maintained under the new system. In order to ensure that the County is still providing high quality defense for contempt of court respondents, the proviso workgroup identified indicators to provide baseline measurement of the contempt of court caseload area. These baseline indicators were measured for the first two or three months of 2011, as specified below. If these indicators rise significantly beyond these baselines it may indicate that there is a problem with the system and require reconsideration of the contempt defense staffing model.

Primary among the indicators tracked by the proviso workgroup is the frequency of extended calendars. According to the Court, under the old system the contempt of court calendars never ran longer than their allotted time. Should contempt calendars frequently go longer than scheduled, it may indicate that defense attorneys are unable to provide an adequate level of service under the new staffing model, resulting in inefficiency and delays in the courtroom, a high stress level for the attorneys involved, and increased costs for the County (i.e., due to overtime for Court or DJA staff). Similarly, the Court tracked the number of cases continued to the next calendar due to time constraints. If the Court is unable to complete a scheduled calendar in the allotted time and has to continue cases to the next calendar, it may indicate that workload is too great for defense attorneys under the current staffing system.

According to Superior Court, neither the frequency of extended calendars or continuances has changed since implementation of the new defense payment and staffing model. The Court tracked the start and stop times of contempt calendars from January 18, 2011 through March 31, 2011 in both Seattle and Kent and noted no difference in calendar start and stop times or workload continuances compared to previous years. The Court will continue to monitor these calendars, and has agreed to notify PSB and OPD if there are changes in these indicators in the future.

In addition to the key calendar timing measures tracked by Superior Court, the Department of Judicial Administration (DJA) analyzed SCOMIS, Superior Court's data system, and was able to identify additional workload measures.³ Based on the criteria used to identify active state-filed contempt of court cases in

³ The specific cases under consideration (i.e., Track B child support contempt of court cases brought by the State) were not uniquely coded in SCOMIS prior to 2011. DJA used alternative methods to isolate these cases and retroactively coded the cases filed between January 1, 2007 and December 31, 2010 that remained active. Although some cases from prior to 2007 are also still active, these cases were not considered in this analysis because of the time that would be required to manually identify and code them.

which public defense is required because jail is a possible sanction (i.e., Track B⁴ cases), DJA found 180 cases filed after January 1, 2007 and remaining active on March 29, 2011. Should this number grow significantly due to additional cases being converted from Track A to Track B without a comparable number of resolutions, it may mean that the workload has grown large enough that the current defense staffing model is inadequate.

According to DJA, these 180 cases were calendared for 124 hearings in Seattle and 63 hearings in Kent between January 18 and March 31, 2011, giving averages of 4.1 cases per calendar in Seattle and 3.9 cases per calendar in Kent. Over the same 11-week period, 211 total hearings were held on these cases. It is important to note that because these counts exclude cases filed prior to 2007, the actual numbers of cases scheduled per calendar and total hearings held are higher. Nonetheless, should these numbers rise significantly over a comparable period in the future after taking into account recent resolutions and Track A to Track B conversions, it may indicate that the workload is growing and may no longer be manageable for defense attorneys at the current staffing level.

Over the January through March 2011 time period, the PAO reported that 15 cases were converted from Track A to Track B, representing a total of 13 respondents. The proviso workgroup agreed that because of the length of time contempt of court cases typically stay active in the system, recent Track B conversions are not necessarily the best measure of current workload. Nonetheless, should the PAO convert cases from Track A to Track B at a significantly higher rate than it typically has in the past it could increase the workload to the extent that the current defense staffing level proves insufficient.

Finally, defense contractors tracked jail remand days for their clients as a baseline.⁵ NDA reported nine days in January and February while ACA had zero and SCRAP had zero over a slightly different period (January 17 through March 4, 2011). These numbers were validated with the PAO, who confirmed that they are an accurate reflection of jail remand days under this definition. Expanding the definition to include total days served on contempt of court matters only, excluding days held in jail prior to the hearing (i.e., returns on warrant), NDA reported an additional 30 jail days and SCRAP another 16 over the same periods. ACA does not track jail days due to returns on warrant, but reported that they did have some jail days under this definition. Both remands and returns on warrant are subject to considerable fluctuation based on a variety of factors; however, should there be a sustained increase in the number of days spent in jail on contempt matters it may be an indicator of insufficient preparation time or client contact by defense attorneys under the current defense staffing system.

Conclusions and Next Steps

Because the parties involved agree that the new public defense staffing model is working well so far, PSB and the contempt of court proviso workgroup do not have any recommendations to change the

⁴ All child support contempt of courses begin as Track A cases, in which there is no threat of jail and public defense is not required. If the defendant fails to meet their obligations, the Prosecuting Attorney's Office may move them to Track B, in which jail is a potential sanction and public defense is required.

⁵ "Jail remand days" are defined as days spent in custody because the respondent was ordered to jail by the Family Law Commissioner on a family support civil warrant only, with no other holds or warrants to account for jail days.

system at this time. However, there are several stress points that must be monitored to ensure that the system remains operating efficiently.

According to both ACA and the PAO, the current staffing level in Kent presents a challenge and results in reduced efficiency for the contempt of court process. Because there is only one defense attorney present in the courtroom, the prosecution and defense are unable to negotiate cases without disrupting the court calendar and causing delays that could potentially prevent the completion of the scheduled calendar. Further, there is a risk if there are too many contested hearings on a calendar it would be very difficult or impossible for a single attorney to provide adequate defense for all of them.

From NDA's perspective, the new system is operating smoothly because of their ability to assign two attorneys to work 50 percent on contempt of court and 50 percent on District Court expedited cases. However, if the court calendars changed so that these calendars were no longer aligned they warn that may not be able to provide the same level of service.

In addition to these specific risk factors, it is possible that the current defense staffing level will prove inadequate due to future contempt of court workload increases. In order to detect and address any potential workload increase that may cause disruptions to the system, the defense contractors have agreed to notify PSB and OPD should they feel that they are no longer able to provide adequate defense to contempt of court respondents at the current staffing level. Should that occur, PSB and OPD will reconvene the proviso workgroup to update measurements of the indicators discussed above to see if they have changed significantly from the baselines and determine the most appropriate way to respond to the specific circumstances.