



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

Motion 16516

Proposed No. 2023-0275.1

Sponsors Zahilay

1 A MOTION acknowledging receipt of the report on the
2 department of public defense's assigned counsel hourly
3 rates in accordance with the 2023-2024 Biennial Budget
4 Ordinance, Ordinance 19546, Section 17, Proviso P5.

5 WHEREAS, the 2023-2024 Biennial Budget Ordinance, Ordinance 19546,
6 Section 17, Proviso P5, requires the executive to transmit a report on the department of
7 public defense's assigned counsel hourly rates, and

8 WHEREAS, the report includes the following:

- 9 1. A market analysis comparing the hourly rates paid by the department of
10 public defense with the hourly rates paid other jurisdictions in Washington;
- 11 2. An analysis of whether the current rates paid to assigned counsel impact
12 the ability of the department to attract qualified assigned counsel; and
- 13 3. Recommendations on whether any hourly rate for outside counsel should be increased,
14 and

15 WHEREAS, the executive is further required to file the report and a motion
16 that acknowledges receipt of the report by July 31, 2023;

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

18 The council hereby acknowledges receipt of the report on the department of
19 public defense's assigned counsel hourly rates, which is Attachment A to this motion, in


Motion 16516

- 20 accordance with the 2023-2024 Biennial Budget, Ordinance 19546, Section 17, Proviso
21 P5.

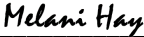
Motion 16516 was introduced on 10/24/2023 and passed by the Metropolitan King County Council on 2/6/2024, by the following vote:

Yes: 9 - Balducci, Barón, Dembowski, Dunn, Mosqueda, Perry, Upthegrove, von Reichbauer and Zahilay

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

DocuSigned by:

E76CE01F07B14EF...
Dave Upthegrove, Chair

ATTEST:

DocuSigned by:

8DE1BB375AD3422...
Melani Hay, Clerk of the Council

Attachments: A. Assigned Counsel Rate Study, July 2023

Assigned Counsel Rate Study

July 2023



King County

Contents

Proviso Text.....	3
Executive Summary	4
Background.....	6
Report Requirements.....	12
A. Market analysis of each of the assigned counsel hourly rates for 2023.....	12
B. Analysis of whether the current rates paid to assigned counsel impact the ability of the department to attract qualified assigned counsel.....	14
C. Recommendations on whether any hourly rate for outside counsel should be increased.....	15
Conclusion/Next Actions	16
Appendix A - Assigned Counsel Capacity Contracts	17
Appendix B – Assigned Counsel Qualifications and Review.....	20

Proviso Text

Ordinance 19546, Section 17, Office of Performance, Strategy, and Budget, Proviso P5¹

Of this appropriation, \$75,000 shall not be expended or encumbered until the executive transmits a report on the department of public defense's assigned counsel hourly rates and a motion that should acknowledge receipt of the report and a motion acknowledging receipt of the report is passed by the council. The motion should reference the subject matter, the proviso's ordinance number, ordinance section, and proviso number in both the title and body of the motion.

The report shall include, but not be limited to, the following:

- A. A market analysis of each of the assigned counsel hourly rates for 2023 and 2024 comparing the hourly rates paid by the department of public defense with the hourly rates paid by the state and other jurisdictions in Washington;
- B. An analysis of whether the current rates paid to assigned counsel impact the ability of the department to attract qualified assigned counsel; and
- C. Recommendations on whether any hourly rate for outside counsel should be increased.

The executive should electronically file the report and motion required by this proviso no later than July 31, 2023, with the clerk of the council, who shall retain an electronic copy and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the law, justice, health and human services committee or its successor.

¹ Ordinance 19546, Section 17, Office of Performance, Strategy, and Budget, Proviso P5 [[LINK](#)]

Executive Summary

The King County Department of Public Defense (DPD) provides legal representation to adults and juveniles who have been charged with a crime and cannot afford an attorney; people facing civil commitment; children, as well as parents who could lose their children in a dependency action; and family members in inquest proceedings. DPD also works with state and local partners and community advocates to address racial disproportionality in the criminal legal system, the collateral consequences of system involvement, and other structural and systemic issues that harm its clients.

DPD handles the majority of its case assignments with County employees. However, approximately 10 percent of DPD's case assignments go to an Assigned Counsel Panel comprised of attorneys who handle cases that DPD cannot accept because of a conflict of interest.

When the Department of Public Defense was formed in 2013, it adopted the then current hourly rates for the Assigned Counsel Panel as established by its predecessor, the King County Office of Public Defense. In 2022, DPD increased the hourly rates for the Assigned Counsel Panel for all case types by 4.5 percent.² This was the first increase in assigned counsel hourly rates since 2013. Further increases of 3 percent for 2023 and 3 percent for 2024 for all Assigned Counsel Panel case types were included in the 2023-2024 Adopted Budget. The King County Executive has committed to considering a general wage increase to these rates on an ongoing basis, to be revisited ahead of each biennial budget cycle.

In accordance with the requirements of this Proviso, Office of Performance, Strategy and Budget (PSB) staff conducted a market analysis of assigned counsel rates, and analysis to determine whether King County's rates impact the ability of the department to attract qualified counsel. The PSB analysis found that:

- King County's assigned counsel rates are lower than the rates of most other counties in the state and federal rates. The impact of King County's lower rate is compounded when considering King County's cost of living, which is 23 percent higher than the state average.³
- King County's capacity contracts, which handle cases in the County's legal system above and beyond DPD's current staffing capacity, compensate at a higher hourly rate than the Assigned Counsel Panel's conflict cases.⁴ This may impact the ability to attract lawyers to the Assigned Counsel Panel, though it is likely not the only factor.
- Despite its lower rates, qualified attorneys apply for and remain on King County's Assigned Counsel Panel.
- Although according to DPD King County has an adequate number of attorneys on the Assigned Counsel Panel, data from DPD shows that it is becoming harder to assign felony cases⁵. The lower-than-average hourly rate may be a factor in attorneys declining cases.
- Limited data is available, and no qualitative or quantitative evidence exists as to what factors attorneys consider when applying to the panel, declining cases while on the panel, or remaining

² [Ordinance 19479](#)

³ Cost of Living Index Major Cities Washington: <https://www.salary.com/research/cost-of-living/wa>

⁴ All capacity contracts are for felony case types

⁵ See Figure 1 Felony Cases Declined Over Time.

on or leaving the panel. The independent contractor relationship limits the ability to survey attorneys and compel them to respond.

Based on PSB's market analysis, PSB does not recommend pursuing an additional increase for outside counsel at this time because it is not financially feasible with current revenues. The Assigned Counsel Panels are primarily funded through the General Fund, which is facing a \$50 million gap in 2025 due to the one percent revenue growth limit on property taxes imposed by the Washington State Legislature. It is the Executive's perspective that the State needs to either provide counties with the resources or tools to pay competitive assigned counsel rates, either through direct funding or General Fund revenue tools including replacing the one percent property tax revenue growth limit with a limit tied to inflation and population growth.

Background

Department Overview

The King County Department of Public Defense (DPD) provides legal representation to adults and juveniles who have been charged with a crime and cannot afford an attorney; people facing civil commitment; children, as well as parents who could lose their children in a dependency action; and family members in inquest proceedings. DPD also works with partners to address racial disproportionality in the criminal legal system, the collateral consequences of system involvement, and other structural and systemic issues that harm its clients.

As part of its work, DPD maintains Assigned Counsel Panels comprised of attorneys who handle cases that DPD cannot accept because of a conflict of interest.

The Department of Public Defense's duties are outlined in the King County Charter (§350.20.60) and King County Code (§2.60.026). DPD provides legal counsel and representation to indigent individuals in legal proceedings, including those in superior and district courts for King County, as guaranteed by the Sixth Amendment to the United States Constitution. DPD is also charged with promoting system improvements, efficiencies, access to justice, and equity in the criminal justice system.⁶

Those served by DPD include:

- people who have been charged with a crime,
- children, and people who could lose their children,
- people who face involuntary commitment to a mental health or substance abuse facility,
- people seeking post-conviction relief from a felony or misdemeanor conviction,
- youth who have been charged with an offense or are facing other proceedings,
- people who face contempt of court for failure to pay child support, and
- people who face civil commitment as sexually violent predators.⁷

In addition, DPD now represents families of the deceased person in an inquest into a law-enforcement-involved death.

DPD is organized into four divisions operating as separate law firms and a Director's Office that provides operational coordination.

Historical Context

The origins of public defense in King County can be traced to *Gideon v. Wainwright*, the landmark U.S. Supreme Court decision in 1963 that required state courts to provide counsel in criminal cases for defendants who are unable to afford their own attorneys.⁸ In 1970, the King County Council declared that publicly financed legal services should be provided to the indigent.

⁶ King County Code 2.60.026 [[LINK](#)]

⁷ RCW 71.09 [[LINK](#)]

⁸ *Gideon v. Wainwright*, 372 US 335 (1963)

In 1973, in keeping with the then-prevailing policy to contract out for delivery of many public services, the County Council authorized contracts for public defense with private nonprofit agencies, a practice that continued for nearly 40 years. Each nonprofit agency had its own Assigned Counsel Panel of lawyers who were independent contractors providing defense to clients in cases due to conflict of interest. The King County Office of Public Defense (OPD), which was a division of the County's Department of Community and Human Services (DCHS), eventually centralized the administration of the nonprofits' Assigned Counsel Panels and adopted the highest hourly rate for each case type. There was no market analysis of rates at the time, nor was there any study of whether the rates were attracting quality Assigned Counsel representation.

In August 2011, the Washington State Supreme Court ruled in *Dolan v. King County* that the four nonprofit public defense organizations with whom the County historically contracted for public defense services had become "arms and agencies" of King County and not independent contractors. The Supreme Court determined that the Dolan class, which included all current and certain former employees of the nonprofit public defense organizations, were employees of the County for purposes of membership in the Public Employees Retirement System (PERS).⁹ Following the ruling, King County began the process of creating the Department of Public Defense (DPD).

When the Department of Public Defense was formed in 2013, it adopted the existing current hourly rates for each case type. There was no increase in these hourly rates until 2022.

In 2022, DPD increased the hourly rates for the Assigned Counsel Panel for all case types by 4.5 percent.¹⁰ This represented the first increase in hourly rates since DPD was formed. A further increase of 3 percent for 2023 and 3 percent for 2024 for all Assigned Counsel Panel case types was included in the 2023-2024 Adopted Budget. The King County Executive has committed to considering a general wage increase to these rates on an ongoing basis, to be revisited ahead of each biennial budget cycle.

Also in 2022, DPD entered into contracts with lawyers to address an increased number of court filings in the County's legal system beyond what DPD staff can legally handle, referred to here as capacity cases. Contracted lawyers, who cannot decline to take a negotiated number of cases, are now retained for the purposes of handling capacity cases which previously went to the Assigned Counsel Panel. These capacity contracts reimburse lawyers at a higher hourly rate than the hourly Assigned Counsel Panel rate, as discussed below.

Current Context

Conflict Cases and Capacity Cases

DPD handles the majority of case assignments with County employees. However, approximately 10 percent of DPD's annual case assignments go to the Assigned Counsel Panel¹¹. These cases are separated into two types: conflict cases and capacity cases. Conflict cases are cases where there is a real or apparent conflict of interest where DPD cannot defend a client based on that conflict of interest. Capacity cases are cases in the County's legal system above and beyond DPD's current staffing capacity.

⁹ *Dolan v. King County* Supreme Court Written Opinion [[LINK](#)]

¹⁰ Ordinance 19479

¹¹ See Table 1 Total 2022 Case Assignments by Practice Area.

DPD staff caseloads are limited by Washington State Bar Association caseload standards and County policy¹².

With the creation of the capacity contracts in 2022, capacity cases are being handled primarily through capacity contracts¹³, while conflict cases are predominantly assigned to the Assigned Counsel Panel. While this arrangement is not unique among Washington counties, it is a change from DPD historical practice, since the Assigned Counsel Panel used to handle both conflict and capacity cases. This shift occurred due to the increase over time in the number of capacity cases.

Assigned Counsel Panel Overview

Application Process¹⁴

Attorneys must fill out an online application to be considered for the Assigned Counsel Panel by DPD.¹⁵ DPD's Assigned Counsel Coordinator reviews applications and appoints attorneys to the Assigned Counsel Panel for use on Practice Area Panels based on attorney experience and DPD needs. Assigned Counsel Panel attorneys function as independent contractors; DPD can end the relationship with an attorney at any time for any reason.

Practice Area Panels

The Assigned Counsel Coordinator assigns attorneys to cases across the seven Practice Area Panels shown below. Attorneys can serve on more than one Practice Area Panel.

- Adult Felony
- Adult Misdemeanor - King County District Court
- Adult Misdemeanor - Seattle Municipal Court
- Juvenile Defense (Including Becca¹⁶ and Children in Need of Services)
- Involuntary Treatment Act
- Civil Contempt of Court (both public" and "private)

Case Types and Hourly Rates

Table 1 shows total 2022 cases assignments by Practice Area and the proportion of assignments that were sent to the Assigned Counsel Panel. Although case assignments varied by case type, on average, 91 percent of 22,175 total case assignments were handled by DPD staff and 9 percent were handled by the Assigned Counsel Panel. However, for the Family Defense practice area, 27 percent of the 895 total 2022 Case Assignment went to the Assigned Counsel.

¹² Washington State Standards for Indigent Defense: [standards-for-indigent-defense-services-approved-by-bog-revised-september-2021.pdf \(wsba.org\)](https://www.wsba.org/standards-for-indigent-defense-services-approved-by-bog-revised-september-2021.pdf)

¹³ For a full list of capacity contracts see Appendix A.

¹⁴ King County Department of Public Defense Assigned Counsel Policies and Procedures: https://kingcounty.gov/~media/depts/public-defense/assigned-counsel/DPD_Assigned_Counsel_Policy_FINAL_030923.ashx?la=en

¹⁵ King County Department of Public Defense Assigned Counsel Panel Application: https://kingcounty.gov/~media/depts/public-defense/assigned-counsel/Assigned-Counsel-Panel-Application_FINAL_072121.ashx?la=en

¹⁶ Becca cases are those involving truant, at-risk, and runaway youth. DPD appoints attorneys to children involved in Becca cases—at-risk youth, Children in Need of Services (CHINS) or truancy petitions—which are under court's jurisdiction and are in the contempt stage. Parents involved in CHINS cases may receive a public defender but must screen to see if they are eligible.

Table 1 Total 2022 Case Assignments by Practice Area

Case Assignments by Practice Area	Assigned Counsel	DPD Attorneys	Total
Becca	15	107	122
Contempt of Court	7	41	48
Family Defense	245	650	895
Felony	554	5,279	5,833
ITA	371	4,739	5,110
Juvenile	82	724	806
Misdemeanor	457	3,030	3,487
SMC	188	5,686	5,874
TOTAL	1,919	20,256	22,175

Assigned Counsel Panel attorneys provide defense for the various case types at the following hourly rates:

Table 2 King County Assigned Counsel Payment Rates (as of January 1, 2023)

TYPE OF CASE	HOURLY RATE
Aggravated Murder	\$ 97
Class A Felony	\$ 81
Class B Life	\$ 81
Class B Felony	\$ 70
Class C Felony	\$ 65
Fugitive/Extradition	\$ 81
Adult Misdemeanor (KC and SMC)	\$ 59
Juvenile Class A Felony	\$ 81
Juvenile Class B Felony	\$ 70
Juvenile Class C Felony	\$ 70
Juvenile Misdemeanor	\$ 59
Material Witness	\$ 54
Expedited Calendar	\$ 48
Family Defense - Dependency	\$ 54
Family Defense - Guardianship	\$ 59
Family Defense - Termination	\$ 59
Extended Foster Care	\$ 54
BECCA - ARY, CHINS, Truancy	\$ 70
Contempt of Court	\$ 54
Involuntary Treatment Act	\$ 70
RALJ Appeal	\$ 48

Funding

In 2022, DPD spent \$5.3M on the Assigned Counsel Panel. Funding is almost entirely paid for by the County's General Fund, with some exceptions:

- DPD applies its full Public Defense Improvement Fund¹⁷ revenue (approximately \$1.2M annually) to Assigned Counsel Panel expenditures. .
- Involuntary Treatment Act cases are reimbursed in full by the Mental Illness and Drug Dependency Behavioral Health Sales Tax Fund managed by the Department of Community and Human Services.
- Family Defense Parent Representation cases are reimbursed by the State Office of Public Defense. Note that the Family Defense Child Representation is an evolving case type in terms of how it gets funded. House Bill 1219, which passed the State Legislature in 2021, mandates child representation statewide through the State Office of Civil Legal Aid (OCLA).¹⁸ OCLA will be taking over payment and contracting of these cases on a county-by-county basis. King County will be implemented last, currently estimated to occur in 2027.¹⁹ Child representation is a service that King County already provides, though it is not yet mandated, and it is currently paid for by the County's General Fund. Once implementation occurs and OCLA takes over management, the County will no longer fund child representation or be involved in providing this service. OCLA will contract directly with lawyers for these cases. OCLA will prioritize continuity of counsel for children who are already represented by counsel at county expense when the legislation becomes effective in that county and will be directly contracting with attorneys on an FTE or percent FTE basis.²⁰

Report Methodology

- This report was compiled by the Office of Performance, Strategy and Budget (PSB) in partnership with DPD, which provided extensive data. In addition to DPD, PSB consulted with the Washington State Offices of Public Defense and Civil Legal Aid on current market rates for outside counsel.

In addition, PSB consulted with Legal Counsel for Youth and Children (LCYC) for historical context on and feedback regarding rates specific to child representation in dependency proceedings. LCYC did not participate in rate analysis or the development of recommendations.

Definitions

The following terms and definitions are used in this report:

- **Conflict cases** – Cases giving rise to a conflict of interest under the Rules of Professional Conduct in all divisions that handle the case type in question. Conflict cases are sent to Assigned Counsel.

¹⁷ Washington Office of Public Defense Public Defense Improvement Program:

<https://www.opd.wa.gov/program/trial-defense>

¹⁸ Washington State Legislature HB 1219 - 2021-22, Concerning the appointment of counsel for youth in dependency court proceedings: <https://app.leg.wa.gov/billsummary?BillNumber=1219&Year=2021>

¹⁹Office of Civil Legal Aid Children's Representation Program: <https://ocla.wa.gov/about-us/programs/childrens-representation>

²⁰ Office of Civil Legal Aid Frequently Asked Questions: <https://ocla.wa.gov/about-us/programs/childrens-representation/frequently-asked-questions>

- **Capacity cases** – Cases above and beyond what DPD staff attorneys are legally able to represent. Capacity cases are sent to Assigned Counsel.
- **Assigned Counsel** – Lawyers who are independent contractors providing defense to DPD clients in cases due to conflict or capacity. This term can refer to both Assigned Counsel Panel and Capacity Contracts.
- **Assigned Counsel Panel** – Lawyers who are independent contractors, who have applied and been appointed to one or more Practice Area Panels to represent DPD clients due to conflict or capacity. These lawyers can decline cases.
- **Practice Area Panel** – Case types that lawyers on the Assigned Counsel Panel can be assigned fall into seven practice areas, each representing a Practice Area Panel. These are: Adult Felony; Adult Misdemeanor - King County District Court; Adult Misdemeanor - Seattle Municipal Court; Juvenile Defense; Family Defense; Involuntary Treatment Act; and Civil Contempt of Court.
- **Capacity Contracts** – Lawyers who are independent contractors, who are under contract to provide defense to DPD clients in cases due to capacity limitations (either within DPD or, in the case of a departmental conflict, within the Assigned Counsel Panel). These lawyers cannot decline cases unless they have a conflict of interest under the Rules of Professional Conduct.

Report Requirements

This report is organized to address the requirements of the Proviso:

- Section A provides a market analysis of each of the assigned counsel hourly rates for 2023, comparing the hourly rates paid by the DPD with the hourly rates paid by the state and other jurisdictions in Washington;
- Section B includes an analysis of whether the current rates paid to assigned counsel impact the ability of the department to attract qualified assigned counsel; and
- Section C provides recommendations on whether any hourly rate for outside counsel should be increased.

A. Market analysis of each of the assigned counsel hourly rates for 2023

A comparison of assigned counsel hourly rates shows that King County's assigned counsel rates are generally lower than:

- other counties in the state,
- the federal government's assigned counsel rates, and
- DPD's own capacity contract rates.

King County assigned counsel rates

Jurisdiction	Class A Felony	Other Felonies	District Court	Juvenile Court	ITA Civil Commitment	RALJ Appeals ²¹
King County	\$81/hr.	\$65-\$81/hr.	\$59/hr.	\$59-\$81/hr.	\$70/hr.	\$48/hr.

Other Washington counties' assigned counsel rates

The table below outlines the 2023 rates for counties in Washington that use assigned counsel.²² While the mix of hourly rates, maximum caps per case, and flat rates make it difficult to assess a market average for each case type, it appears that King County DPD's Felony, District Court/Misdemeanor, Juvenile, ITA and RALJ rates are lower than other counties in Washington. In general, PSB's analysis found that smaller counties with fewer cases pay higher rates.

Jurisdiction	Class A Felony	Other Felonies	District Court	Juvenile Court	ITA Civil Commitment	RALJ Appeals
Chelan County	\$110/hr.	\$110/hr.	\$110/hr.	\$110/hr.	\$110/hr.	\$110/hr.
Grant County	\$95/hr.	\$80/hr.	-	\$85/hr.	-	-
Kitsap County	\$1,350/case	\$1,200/case plus \$300/trial day	\$285/case plus \$300/trial day	\$260-500/case, \$300/trial day	-	\$45/hr., \$1,215 cap
Pierce County	\$90/hr.	\$70/hr.	\$60/hr.	\$60-\$80/hr.	\$60/hr.	\$70/hr.

²¹ Rules for Appeal of Decisions of Courts of Limited Jurisdiction

²² Information is only provided for rates PSB could independently verify.

Jurisdiction	Class A Felony	Other Felonies	District Court	Juvenile Court	ITA Civil Commitment	RALJ Appeals
San Juan County	\$1065/case plus \$644/bench or \$1024/jury trial day	\$1065/case plus \$644/bench or \$1024/jury trial day	\$807/case plus \$404/bench or \$807/jury trial day	\$1065/case plus \$644/trial day	\$527/non-contested case, \$1065/contested case	\$468/case if attny argued case, \$761 if new attny
Skagit County	\$95/hr.	\$90/hr.	\$85/hr.	\$90/hr.	\$85/hr.	\$85/hr.
Snohomish County	\$150/hr.	\$125/hr.- \$135/hr.	\$50/hr.	\$65/hr.	-	\$60/hr.
Spokane County	\$1,400/case plus \$70/hr. for work exceeding 20 hrs.	\$1,400/case plus \$200/trial day	\$1,000/case	\$750/case plus \$200/trial day	-	-
Thurston County	\$90/hr.	\$800/case plus \$600/trial day	\$65/hr.	\$75-90/hr.	\$65/hr.	\$65/hr.
Whatcom County	\$87.50/hr.	\$1,300/Class B; \$1,050/Class C	\$500/case	\$410-875/case	-	\$1,000/case
Yakima County	\$100/hr.	\$75/hr.	\$75/hr.	\$70-\$95/hr.	\$70-\$75/hr.	\$75/hr.

The above rates were self-reported by counties to the Washington State Office of Public Defense in their applications for Chapter 10.101 RCW funds²³ and apply specifically to conflict counsel rates for attorneys who are appointed to cases on an as-needed and as-available basis.

Washington State child dependency rates

As mentioned above, OCLA is phasing in implementation of child representation on a county-by-county basis with King County scheduled for implementation in 2027. OCLA currently provides an hourly rate of \$125/hour with a cap at \$3,000. However, attorneys only bill at the hourly rate if they have fewer than three cases. After that, attorneys negotiate a percentage contract that pays up to \$158,000 to \$168,480 per FTE.²⁴

Federal rates

The panel attorney rate for federal cases for 2023 is \$164 for non-capital work.²⁵

²³ Washington State Legislature Chapter 10.101 RCW Indigent Defense Services: <https://app.leg.wa.gov/rcw/default.aspx?cite=10.101>

²⁴ Office of Civil Legal Aid Child Representation Program: <https://ocla.wa.gov/about-us/programs/childrens-representation/>

²⁵ United States Courts. [Chapter 6, § 630: Compensation of Appointed Counsel in Capital Cases | United States Courts \(uscourts.gov\)](https://www.uscourts.gov/Chapter-6-%20-%20630-Compensation-of-Appointed-Counsel-in-Capital-Cases)

King County capacity contract rates

DPD currently has capacity contracts with 10 attorneys and/or law offices. Each of these capacity contracts provide an hourly rate between \$100-\$150.²⁶ An important distinction between Assigned Counsel Capacity Contracts and the Assigned Counsel Panel is that the Assigned Counsel Capacity Contract attorneys cannot decline cases, while the attorneys on the Assigned Counsel Panel can decline to take cases for any reason.

B. Analysis of whether the current rates paid to assigned counsel impact the ability of the department to attract qualified assigned counsel

In accordance with the requirements of this Proviso, PSB staff conducted an analysis to determine whether the rates outlined in Section A impact the ability of the department to attract qualified counsel.

King County's rates are below its peers. The market analysis in Section A shows that King County's assigned counsel rates are lower than most other counties in the state, the federal rates, and the County's own capacity rate. The impact of King County's lower rate is compounded when King County's cost of living, which is 23 percent higher than the state average, is taken into account.²⁷

Qualified attorneys apply for and remain on the Assigned Counsel Panel. A review of the qualifications required for assigned counsel showed that King County is able to attract and retain an adequate number of assigned counsel attorneys who meet the basic qualifications required by DPD and the statewide standards for indigent defense (SIDS)²⁸ to provide indigent defense services.²⁹ These SIDS represent the minimum legal qualifications necessary to provide indigent representation within Washington state. It is important to note that being minimally qualified under the SIDS does not speak to whether an attorney is providing high quality and skilled critical legal representation for some of King County's most vulnerable residents. Approximately 60 attorneys are actively serving on the Assigned Counsel Panel; however, 32 of these attorneys accepted only zero to five total felony cases in 2022. An attorney must only accept one case per year to remain an active panel member.

Assigned Counsel attorneys are taking on fewer felony cases. Despite having an adequate number of attorneys on the Assigned Counsel Panel, the data in figure 3 shows that it is becoming harder to assign felony cases.

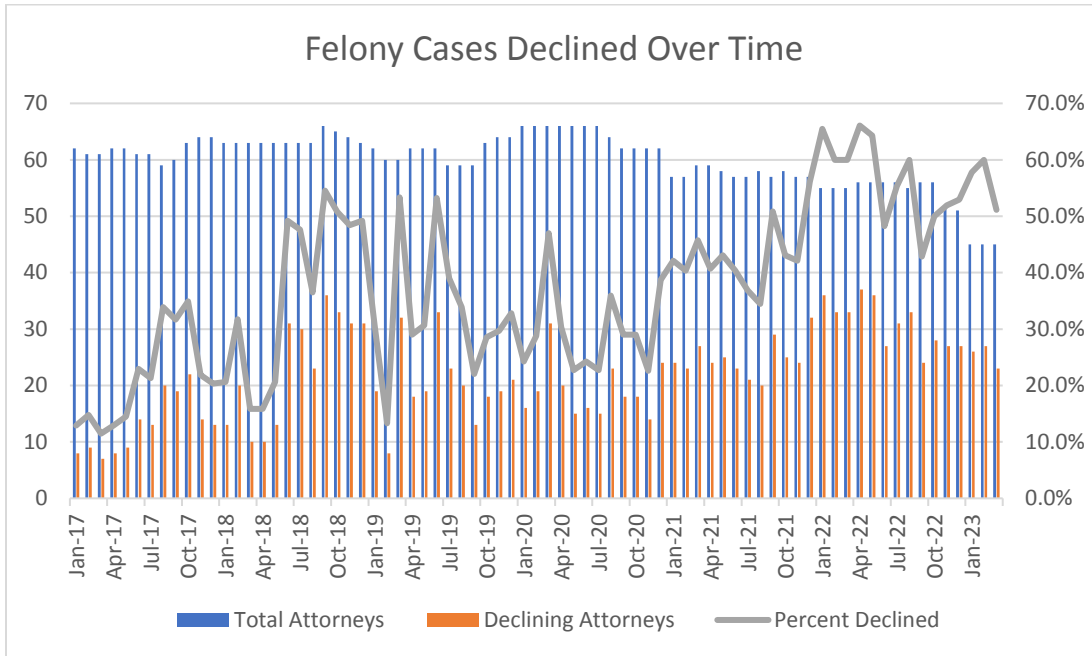
²⁶ See Appendix A for a summary of capacity contracts.

²⁷ Cost of Living Index Major Cities Washington: <https://www.salary.com/research/cost-of-living/wa>

²⁸ Washington State Supreme Court Standards for Indigent Defense: https://www.courts.wa.gov/court_rules/pdf/CrR/SUP_CrR_03_01_Standards.pdf

²⁹ DPD Assigned Counsel Policies and Procedures: https://kingcounty.gov/~media/depts/public-defense/assigned-counsel/DPD_Assigned_Counsel_Policy_FINAL_030923.ashx?la=en

Figure 1 Felony Cases Declined Over Time



* Felonies only. Month by month tally of total attorneys in the dataset for that month and total number of attorneys who declined AND also took no cases. Decline reasons include: capacity, medical leave, vacation, general reported "unavailable," non-response to the survey.

Capacity contracts offer higher rates. King County’s capacity contracts, while not competing for conflict cases, compensate at a higher hourly rate.³⁰ This may impact the ability to attract lawyers to the Assigned Counsel Panel, though it’s likely not the only factor.

Limited data. DPD does not survey attorneys on the Assigned Counsel Panel or attorneys who choose to depart from the Assigned Counsel Panel. As a result, no qualitative or quantitative evidence exists as to what factors attorneys consider when applying to the panel, declining cases while on the panel, remaining on the panel, or leaving the panel. The independent contractor relationship limits the ability to survey attorneys and compel them to respond.

It may be inferred from PSB’s analysis that the lower rates paid to assigned counsel are a factor in the ability of the DPD to attract qualified assigned counsel; however, without specific data about the reasons why is not possible to concretely determine if this is the case.

C. Recommendations on whether any hourly rate for outside counsel should be increased

The Assigned Counsel Panels are primarily funded through the General Fund. The General Fund is facing a \$50 million gap in 2025 due to the one percent revenue growth limit on property taxes imposed by the

³⁰ All capacity contracts are for felony case types.

State Legislature. King County has increased the hourly rates for the Assigned Counsel Panel in 2022 and 2023, with plans for an additional increase in 2024³¹. Due to the constrained General Fund, the Office of Performance, Strategy and Budget does not recommend pursuing an additional hourly rate increase for outside counsel at this time. The King County Executive has committed to reviewing the assigned council hourly rates and considering whether to propose an increase during the upcoming 2025 budget cycle.

In order to rectify the limitations of General Fund revenue growth and the resulting financial constraints impacting King County services like assigned counsel, the State needs to replace the one percent property tax revenue growth limit with a limit tied to inflation and population growth or provide counties funds for competitive assigned counsel rates.

Conclusion/Next Actions

As called for by the Proviso, this report provides a market analysis of assigned counsel rates, as well as an analysis of whether the current rates paid to assigned counsel impact the ability of DPD to attract qualified counsel.

DPD's Assigned Counsel Panel provides critical legal services for some of King County's most vulnerable residents. Although this analysis could not establish whether the rates limit King County's ability to attract qualified counsel to represent these important clients, the compensation for King County's assigned counsel remains below that of other jurisdictions analyzed for this report.

Assigned counsel rates increased by 4.5 percent in 2022 and 3 percent in 2023 and will increase again by 3 percent in 2024. A further increase is not financially feasible at this time. The King County Executive will continue to consider a general wage increase to these rates on an ongoing basis as part of the budget process.

³¹ Ordinance 19479

Appendix A - Assigned Counsel Capacity Contracts

Law Office of Peter Connick

Up to two Class A or B Felony case assignments filed into King County Superior Court per calendar quarter during the duration of this contract, up to four total case assignments per year, to include no more than two Homicide cases. The maximum potential offered cases would be four Class A or B Felony case assignments during the duration of this contract.

Rate: \$150.00 /hr., all case types

Contract Duration: July 1, 2022 - July 1, 2023

Kimberly Exe

Contract: up to five felony case assignments (any of which may be class A, B or C) per calendar quarter; The maximum potential offered cases would be 20 felony case assignments during the duration of this contract.

Rate: \$100.00 /hr., all case types

Contract Duration: July 1, 2021 - June 30, 2022; Extended March 20, 2022 through June 30 2023

Cathy Gormley

Contract: Up to one Class A Felony case per calendar quarter, up to four total case assignments per year, to include no more than two Homicide cases and to exclude Class A sex offenses unless charged as part of a Homicide case.

Rate: \$125.00/hr., all case types

Contract Duration: April 29, 2022 - July 1, 2023

Law Office of Gilbert Levy

Up to two Class A or B Felony case assignments filed into King County Superior Court per calendar quarter during the duration of this contract, up to four total case assignments per year, to include no more than two Homicide cases. The maximum potential offered cases would be four Class A or B Felony case assignments during the duration of this contract.

Rate: \$150.00/hr., all case types

Contract Duration: July 1, 2022 - July 1, 2023

Margaret McGinty

Contract: up to five felony case assignments (any of which may be class A, B or C) per calendar quarter; the maximum potential offered cases would be 20 felony case assignments during the duration of this contract.

Rate: \$100.00/hr., all case types

Contract Duration: July 1, 2021 - June 30, 2022; Extended April 11, 2022 through June 30 2023

Lisa Mulligan

Contract: Up to three Class A Felony case assignments per calendar year; This can include no more than two Homicide cases and to exclude Class A sex offenses unless charged as part of a Homicide case. This shall also exclude any Vehicular Homicide cases. The maximum potential offered cases would be three Class A felony case assignments during the duration of this contract.

Rate: \$125.00/hr., all case types

Contract Duration: October 1, 2022 - September 30, 2023

Obsidian Law (Gestaut, Kristen and Parrotta, Sandro)

Contract: Up to three Felony case assignments (Class A or B) per calendar quarter during the duration of this contract, up to ten 10 total case assignments per year. Case assignments may include up to three Homicide cases per calendar year, up to two Third Strike (or Second Strike sex) case per calendar year. If a capacity case, at the time of assignment, involves more than one count of Homicide involving more than one victim, DPD shall agree to count each Homicide count as a separate Homicide case assignment and separate case under the terms of the Contract. If a Capacity case at assignment includes more than five Class A Felony counts, DPD will agree to count as two separate cases under the terms of the Contract. Upon entry of this contract and for the first pro-rated quarter, the County may assign Contractor up to two case assignments within the limitations specified above. The maximum potential offered cases would be 12 Felony case assignments during the duration of this contract

Rate: \$150.00/hr., all case types

Contract Duration: May 5, 2022 - July 1, 2023

Thomas D. Coe, Attorney at Law

Contract: Up to two Class A felony case assignments per calendar year filed into King County Superior Court during the duration of this contract. This can include up to one case assigned per calendar quarter, and up to one homicide per calendar year. Contractor shall agree to accept only cases that contain a Seattle (SEA) designation at the time of filing. The Class A felony case assignments will exclude any sex offenses unless charged as an additional count in a homicide case or a special allegation to a homicide.

Rate: \$150.00/hr.

Contract Duration: July 1, 2023 - June 30, 2024

Peter Geisness

Contract: Up to three Class A felony case assignments per calendar year filed into King County Superior Court during the duration of this contract. This can include up to one case assigned per calendar quarter and to exclude any felony sex offenses.

Rate: \$150.00/hr.

Contract Duration: April 1, 2023 - March 31, 2025

David Hammerstad

Contract: Contract: Up to six felony case assignments per calendar year filed into King County Superior Court during the duration of this contract. This can include up to two cases assigned per calendar quarter. These six felony cases can include up to four Class A felony cases per year; up to one homicide case per year; up to one felony sex offense per year; and up to one persistent offender case per year.

Rate: \$150.00/hr. (Class A Felony), \$135.00/hr. (Class B & C Felony)

Contract Duration: April 1, 2023 - March 31, 2024

Appendix B – Assigned Counsel Qualifications and Review

Assigned Counsel qualifications

All Assigned Counsel attorneys must demonstrate the following qualifications during the application process and on an ongoing basis:

- Assigned Counsel must be licensed and a member in good standing of the Washington State Bar Association.
- Assigned Counsel must satisfy all ongoing requirements for practicing law as determined by the Washington State Supreme Court, including continuing legal education (“CLE”) requirements. Seven hours of the annual CLE requirement shall be courses related to criminal law or courses relevant to the Assigned Counsel’s practice area panel assignment(s).
- Panel members must demonstrate competence in all areas of the law relevant to their practice areas, including knowledge and familiarity with:
 - The Washington State statutes and Seattle ordinances, Supreme Court and local court rules, and case law relevant to the practice area;
 - All relevant consequences of a conviction, including possible immigration and other collateral consequences;
 - Mental health issues;
 - The process of identifying and obtaining appropriate expert services; and
 - Performing legal research.
- Assigned Counsel shall provide services to all clients in a professional, skilled manner consistent with minimum standards set forth by the Washington State Bar Association Rules of Professional Conduct, applicable court rules, and case law defining the duties of counsel and the rights of defendants in criminal cases.

Assigned Counsel ongoing review

In order to ensure that indigent clients are provided high-quality representation, the Assigned Counsel Coordinator evaluates the performance of Assigned Counsel attorney accepting cases. Such evaluation may include, but is not limited to:

- Observing the Assigned Counsel’s performance in court;
- Soliciting and receiving comments from clients, judges, other counsel, and court staff regarding the Assigned Counsel’s performance; and
- Examining documents filed by the Assigned Counsel in court or submitted to DPD for billing or other DPD processes or requirements.

Certificate Of Completion

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Subject: Complete with DocuSign: Motion 16516.docx, Motion 16516 Attachment A.docx	
Source Envelope:	
Document Pages: 2	Signatures: 2
Supplemental Document Pages: 20	Initials: 0
Certificate Pages: 5	Envelope Originator:
AutoNav: Enabled	Cherie Camp
Envelopeld Stamping: Enabled	401 5TH AVE
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	SEATTLE, WA 98104
	Cherie.Camp@kingcounty.gov
	IP Address: 198.49.222.20

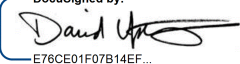
Record Tracking

Status: Original	Holder: Cherie Camp	Location: DocuSign
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Security Appliance Status: Connected	Pool: FedRamp	
Storage Appliance Status: Connected	Pool: King County-Council	Location: DocuSign

Signer Events

Dave Upthegrove
dave.upthegrove@kingcounty.gov
Chair
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

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Signature Adoption: Uploaded Signature Image
Using IP Address: 198.49.222.20


Timestamp

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Viewed: 2/7/2024 11:30:08 AM
Signed: 2/7/2024 11:30:20 AM

Electronic Record and Signature Disclosure:

Accepted: 2/7/2024 11:30:08 AM
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Melani Hay
melani.hay@kingcounty.gov
Clerk of the Council
King County Council
Security Level: Email, Account Authentication (None)

DocuSigned by:

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Signature Adoption: Pre-selected Style
Using IP Address: 198.49.222.20

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Electronic Record and Signature Disclosure:

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Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	2/7/2024 11:33:40 AM
Completed	Security Checked	2/7/2024 11:33:40 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

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Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

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You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: cipriano.dacanay@kingcounty.gov

To advise King County-Department of 02 of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at cipriano.dacanay@kingcounty.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

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To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to cipriano.dacanay@kingcounty.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

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- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify King County-Department of 02 as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by King County-Department of 02 during the course of your relationship with King County-Department of 02.