



# KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Signature Report

### Motion 15515

**Proposed No.** 2019-0313.1

**Sponsors** Gossett

1           A MOTION acknowledging receipt of the report on parity  
2           in staffing and budgets between the prosecuting attorney's  
3           office and the department of public defense in accordance  
4           with the 2019-2020 Biennial Budget, Ordinance 18835,  
5           Section 19, Proviso P5, providing background information  
6           on King County's statutory requirements for parity, as well  
7           as an overview and comparison of each department's  
8           budget, functions, areas of work, staffing structure and  
9           staffing levels for the courts in which both departments  
10          practice.

11          WHEREAS, the 2019-2020 Biennial Budget, Ordinance 18835, Section 19,  
12          Proviso P5, requires the executive to transmit a report on parity between the prosecuting  
13          attorney's office and the department of public defense, and

14          WHEREAS, the report includes the following:

- 15          1. A definition of "parity," which includes caseloads;
- 16          2. A review of the extent to which there is parity in the staffing and budgets  
17          between the prosecuting attorney's office and the department of public defense; and
- 18          3. An examination of staffing levels for each court and provides budget options  
19          for achieving parity between the two agencies, and

20           WHEREAS, the executive is further required to submit a motion that  
21 acknowledges receipt of the report by July 8, 2019;

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

23           The receipt of the report on the analysis of parity in staffing and budgets between  
24 the prosecuting attorney's office and the department of public defense for King County  
25 Proviso Response, which is Attachment A to this motion, in accordance with the 2019-

26 2020 Biennial Budget, Ordinance 18835, Section 19, Proviso P5, is hereby  
27 acknowledged.  
28

Motion 15515 was introduced on 7/17/2019 and passed by the Metropolitan King County Council on 9/18/2019, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn, Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci



KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

A handwritten signature in blue ink, appearing to read "Rod Dembowski", is written over a horizontal line.

Rod Dembowski, Chair

ATTEST:

A handwritten signature in black ink, appearing to read "Melani Pedroza", is written over a horizontal line.

Melani Pedroza, Clerk of the Council

**Attachments:** A. Parity between the Prosecuting Attorney's Office and the Department of Public Defense Proviso Response



**King County**

**Parity between the Prosecuting Attorney's Office and  
the Department of Public Defense Proviso Response**

Office of Performance, Strategy and Budget

July 8, 2019

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## I. EXECUTIVE SUMMARY

The 2019-2020 King County Adopted Budget includes a proviso requiring an analysis of parity in staffing and budgets between the Prosecuting Attorney's Office (PAO) and the Department of Public Defense (DPD) (Ord. 18835, Sec. 19, P5). This report fulfills the requirements of the proviso.

### Key Findings

King County's Code requires the Department of Public Defense to provide services in accordance with the American Bar Association's Ten Principles for a Public Defense Delivery System. These principles call for parity between public defense and prosecution. Public Defense attorneys achieved parity in compensation when they became King County employees and adopted the same pay schedule as Deputy Prosecuting Attorneys.

The total budgeted expenditures for the PAO and DPD are relatively similar while the PAO generally has a higher total number of budgeted FTE. However, the PAO and DPD are not directly comparable because they have significantly different responsibilities and practice areas such as the PAO's Civil and Family Support Divisions and DPD's Dependency and Seattle Municipal Court contracts. In addition, the PAO and DPD provide different functions in the local legal system and thus staff their work using different classifications.

As this report outlines, because the respective bodies of work generally cannot be compared for parity beyond compensation, no further budget actions are identified.

### Proviso Text

#### Section 19, Office of Performance, Strategy and Budget

*P5 PROVIDED FURTHER THAT:*

*Of this appropriation, \$100,000 shall not be expended or encumbered until the executive transmits a report on parity between the prosecuting attorney's office and the department of public defense and a motion that should acknowledge receipt of the report and reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion and a motion acknowledging receipt of the report is passed by the council.*

*The report shall include, but not be limited to a definition of parity, which includes caseloads. The report shall review the extent to which there is parity in the staffing and budgets between the prosecuting attorney's office and the department of public defense, examine the staffing levels for each court and provide budget options for achieving parity between the two agencies.*

*The executive should file the report and a motion required by this proviso by July 8, 2019, 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, the council chief of staff and the lead staff for the law and justice committee, or its successor.*

## II. BACKGROUND

The analysis in this report was conducted by the Office of Performance, Strategy and Budget with input from the PAO and DPD. Each department provided staffing information which was validated by PSB using official sources. This report outlines the roles and functions of each department, King County's relevant adopted framework of parity between them, and provides budget summaries and staffing levels for the courts in which both practice. The report highlights the differences in each department's bodies of work that limit comparability.

The Prosecuting Attorney's Office and Department of Public Defense provide different public services and play different roles in King County's legal systems, thus complicating direct comparisons. This report provides background information on King County's statutory requirements for parity as well as an overview and comparison of each department's budget, functions, areas of work, and staffing structure, and provides staffing levels for the courts in which both departments practice.

### Prosecuting Attorney's Office Overview

Mission: "The mission of the King County Prosecuting Attorney's Office is to do justice. We exercise the power given to us by the people with fairness and humility. We serve our diverse community, support victims and families, and hold individuals accountable. We develop innovative and collaborative solutions for King County and the State of Washington."<sup>1</sup>

The Prosecuting Attorney's Office is responsible for the prosecution of all felony and juvenile cases in King County and all misdemeanor cases generated in unincorporated areas of King County. The PAO also serves as legal counsel to the Metropolitan King County Council, the King County Executive, all executive agencies, Superior and District Courts, the King County Sheriff's Office, the King County Assessor, various independent boards and commissions, and some school districts. Under agreements with the State of Washington, the PAO also establishes and enforces child support obligations, and is an integral part of the mental health civil commitment process. The PAO is largely supported by the General Fund. The PAO also generates revenue from the entities for which it provides legal counsel and receives state and federal funding for specific programs and services.

The PAO manages or participates in several programs that provide alternatives to the mainstream criminal legal system. These include three therapeutic court programs funded by the Mental Illness and Drug Dependency (MIDD) Fund: Regional Mental Health Court/Regional Veterans Court, King County Adult Drug Diversion Court, and Juvenile Drug Court. Juvenile-specific initiatives include the 180 Program and Family Intervention and Restorative Services (FIRS) program. Additionally, the new Community Empowered Disposition Alternative and Resolution (CEDAR) initiative, funded in 2018, is an expedited track for first-time juvenile offenders that pulls together juvenile justice stakeholders to achieve positive outcomes for the youth, lower racial disproportionality, and reduce the use of detention. Alternative programs for adults with behavioral health disabilities include the Familiar Faces Initiative and Law Enforcement Assisted Diversion (LEAD).

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<sup>1</sup>King County Prosecutor's Office Mission Statement

The PAO is organized in four divisions including Civil, Criminal, Juvenile, and Family Support, as well as a Policy and Administration division. The PAO's role in is outlined in RCW 36.27.020.

## Department of Public Defense Overview

**Mission:** “The King County Department of Public Defense represents indigent adults and children facing a loss of liberty. Our department is an independent voice that promotes justice and equity for our clients and advocates for their objectives, interests, and dignity.”<sup>2</sup>

The Department of Public Defense's duties are outlined in the King County Charter (§350.20.60) and King County Code (§2.60.026). The department 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.”

DPD's 2019 Annual Report states:

*The Department of Public Defense provides high-quality legal representation to people in King County who are charged with a crime or face a loss of liberty and who cannot afford an attorney. Among those we serve are:*

- *people who have been charged with a crime;*
- *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 (RCW 71.09).*

In addition, DPD now represents families of the deceased person in an inquest into a law-enforcement-involved death. DPD is organized as four divisions operating as separate law firms and a Director's Office that provides operational coordination. The four divisions, reflecting their history as non-profits before becoming a part of King County in 2013, are called Associated Counsel for the Accused Division (ACAD), Northwest Defenders Division (NDD), Society of Counsel Representing Accused Persons Division (SCRAPD), and The Defender Association Division (TDAD).

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<sup>2</sup> Department of Public Defense 2019 Annual Report



### III. PARITY

#### Definition

This report uses the statutory framework of parity referenced in the King County Code, which requires public defense services to be provided in accordance with the American Bar Association (ABA) Ten Principles for a Public Defense Delivery System which constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation, and the Washington State Bar Association Standards for Indigent Defense Services<sup>3</sup>.

Principle 8 of the ABA standards<sup>4</sup> establishes the criteria for parity stating, “There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.” This principle provides further commentary including, “This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.”

#### History

Prior to the creation of DPD in 2013, public defense was provided to indigent King County defendants by four independent non-profit organizations. These firms were paid according to a model that estimated annual caseloads and calculated the cost of providing defense using agreed-upon per-attorney caseloads and adding in administrative overhead and other expenses. Although the public defense firms were managed independently and had full authority to negotiate salary with their employees, the County had an interest in assuring that staff providing public defense received pay parity with their counterparts at PAO. Consequently, the public defense payment model assumed that employees of the contract firms were paid salaries similar to those at PAO, and payments to the firms reflected this assumption.

When employees of the contract firms were made County employees in the new Department of Public Defense, the County learned the contract firms had paid their employees substantially less than rates assumed by the funding model. During the transition to County employees, DPD employee salaries were increased to the level of PAO employees, achieving true pay parity with prosecution.

Since that time, DPD and PAO have used the same pay scales, and there is no longer a suggestion of pay disparity between the two departments. However, concerns have been raised that although staff are paid similarly, there may not be full resource parity between the two agencies. This could manifest itself through one of the agencies having substantially more attorney, supervision, paralegal and clerical support, or other resources than the other.

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<sup>3</sup>King County Code § 2.60.026

<sup>4</sup>American Bar Association Ten Principles of a Public Defense Delivery System

## **Caseloads**

The Washington State Bar Association Standards for Indigent Defense<sup>5</sup> outline the following maximum caseloads for public defenders:

- 150 felonies per attorney per year; or
- 300 misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or
- 250 juvenile offender cases per attorney per year; or
- 80 open juvenile dependency cases per attorney; or
- 250 civil commitment cases per attorney per year; or
- 1 active death penalty trial court case at a time plus a limited number of non-death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 supra; or
- 36 appeals to an appellate court hearing a case on the record and briefs per attorney per year.

Operationally, cases are assigned credits that are used to calculate caseloads. In general, each case receives one credit. DPD adopts case crediting policies for each case area that outline when additional credits are awarded. Attorneys certify that they are operating within caseload limits. No similar caseload limit exists for Deputy Prosecuting Attorneys. PAO staffing is based on workload estimates made by the leads of each unit. The PAO also exercises prosecutorial discretion and has made decisions related to which case types to file. These decisions have reflected policy direction and has also been used to control workloads or respond to budget constraints.

## **Budgets and Staffing**

Exhibit 1 below shows the total departmental expenditure budget between 2015 and 2020, including all divisions and appropriation units in the General Fund, Mental Illness and Drug Dependency Fund, and Grants Fund. This includes revenue-backed expenditures. The increase for public defense between 2015 and 2016 represents part of the transition period when the public defense staffing model and salary parity with the PAO went into effect.

While providing very different services, the overall budgets for the agencies are of relatively similar size. Over the past three biennia, the PAO's budget has ranged from \$8 million (13%) more than DPD in 2015 to \$3.2 million (4%) less in 2016, and \$8.7 million (11%) more in 2020.

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<sup>5</sup> Washington State Bar Association Standards for Indigent Defense

**Exhibit 1. PAO and DPD Total Budgeted Expenditures, 2015-2020**

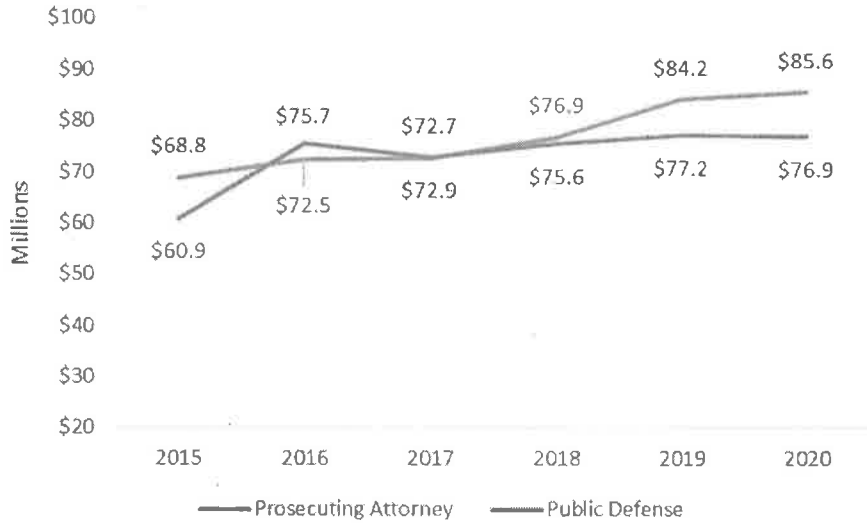
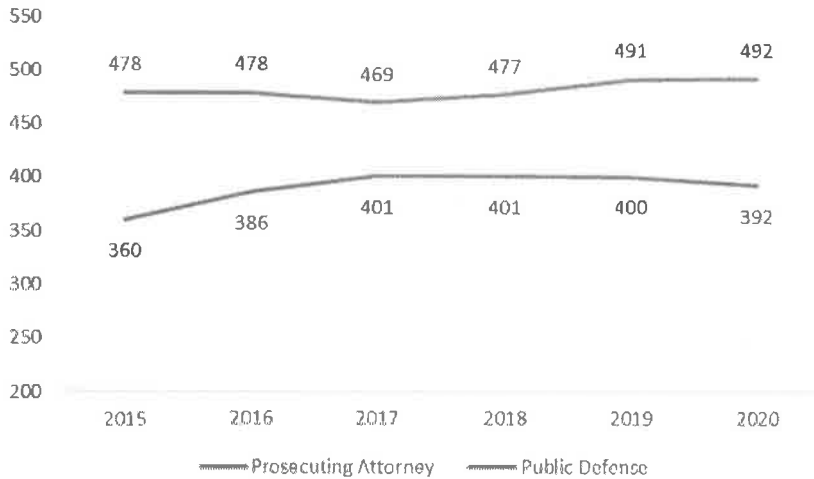


Exhibit 2 shows total budgeted FTE for each agency including all appropriation units. Similar to Figure 1, DPD’s staff increased between 2015 and 2017 as part of the transition to King County. Staffing levels have flattened since then. In 2015, the PAO had 118 (33%) more budgeted FTE than DPD. By 2017, that difference decreased to 68 FTE (17%). In the 2020 budget, the PAO has 100 more FTE (26%). The following report sections outline differences in practice areas that influence total staffing levels.

**Exhibit 2. Total Budgeted Regular<sup>6</sup> FTE, 2015-2020**



**Practice Areas**

While prosecutors and public defenders both perform legal work and face one another in some courtrooms, they each have distinct roles and unique functions in King County’s legal system. For example, the PAO prosecutes all cases in its jurisdiction including cases assigned to DPD

<sup>6</sup> Excludes unfunded Public Defense FTE used to pre-hire new attorneys.

and those in which the defendant has hired a private attorney. In addition to criminal work, the PAO provides legal advice to all King County agencies and departments through its Civil Division. The PAO supports families in seeking child support through its Family Support Division and provides victim assistance, as well as other special programs. The PAO also participates in diversion programs such as Law Enforcement Assisted Diversion (LEAD) and Legal Intervention and Network of Care (LINC).

Similarly, the Department of Public Defense has unique functions. It provides public defense services under contract for defendants charged in Seattle Municipal Court (SMC). In addition, it represents each family member in dependency proceedings. Dependency prosecution is handled by the Washington State Attorney General’s Office.

The diagram below illustrates the differences in practice areas between the departments as well as the areas in which both practice.

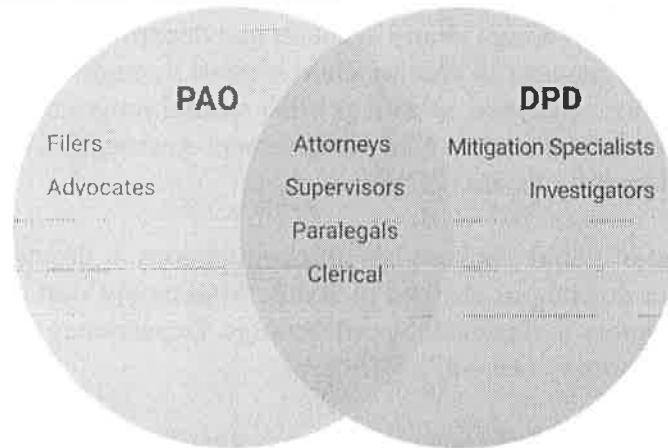
**Exhibit 3. PAO and DPD Practice Areas**



**Staffing Structure**

The departments staff their work differently according to their needs and use different job classifications. The diagram below illustrates the staffing types used by each. The PAO staffs its cases based on subject matter including economic crimes, violent crimes, special assault, and domestic violence. The PAO assigns some attorneys as filers, focusing primarily on reviewing referrals from law enforcement and determining whether to file cases. The filing attorneys also staff court calendars, including first appearance and arraignment, and respond to inquiries from law enforcement about requests for information and evidence. As part of its approach to domestic violence, the PAO provides domestic violence advocates who support survivors through the court process.

**Exhibit 4. PAO and DPD Staff Classifications**



Public Defense organizes staff by case type within each of its four divisions. The Standards for Indigent Defense specify ratios of support staff and supervision for attorneys. DPD’s budget is based on these required ratios. Supervisors sometimes carry caseloads depending upon the volume of work in their unit and when staff are on leave. DPD employs investigators to conduct its own investigations of alleged crimes, whereas the PAO works with law enforcement agencies. In addition, DPD provides mitigation specialists, typically licensed social workers, to gather information on mitigating circumstances of clients and provide assessments and referrals to services. In addition, DPD uses a vertical representation model in which the attorney assigned to a case at the outset represents that client throughout the case.

**Staffing Levels by Court**

Exhibit 5 below shows PAO and DPD staffing levels at King County including Superior Court, District Court, Involuntary Treatment Act (ITA) Court, and Juvenile Court courts where both departments practice. The table includes position counts for attorneys, supervisors, support staff (paralegals and clerical staff), and staff categories unique to each department.

When comparing staffing levels, the role of private and Assigned Counsel (AC) should be considered. PAO staff handle all cases regardless of whether the defendant hires a private attorney or is assigned a public defender. Some defendants hire private attorneys and do not use DPD services. The PAO estimates that ten to 35 percent of cases are represented by private attorneys<sup>7</sup>. Rates of private counsel are higher in District Court due to the high number of private attorneys specializing in Driving Under the Influence (DUI) cases. In addition to using staff attorneys, DPD maintains an Assigned Counsel (AC) panel of private attorneys who handle cases that involve ethical conflicts and when DPD attorneys have reached their caseload maximum. According to DPD’s 2019 Annual Report, approximately 10 percent of cases were sent to AC in 2018 (page 4).

<sup>7</sup> Data provided by PAO to PSB on 6/24/19.

**Exhibit 5. Court Staffing by Department, 2019<sup>8</sup>**

<b>Court</b>	<b>Position Type</b>	<b>PAO</b>	<b>DPD</b>
Superior Court	Attorneys	74.7	71.7
Superior Court	Supervisors & Support	64.0	30.0
Superior Court-ITA	Attorneys	7.0	18.0
Superior Court-ITA	Supervisors & Support	4.5	6.0
Superior Court-Juvenile	Attorneys	8.0	9.4
Superior Court-Juvenile	Supervisors & Support	13.0	4.4
District Court	Attorneys	18.2	18.9
District Court	Supervisors & Support	21.4	12.9
General/Pooled	Supervisors & Support	7.0	11.8
<b>Subtotal</b>		<b>217.8</b>	<b>183.1</b>
	PAO Filers & Support	23.32	NA
	PAO Advocates	12	NA
	PAO Records & Discovery	21	NA
	DPD Investigators	NA	34
	DPD Mitigation Specialists	NA	22
<b>Subtotal</b>		<b>56.32</b>	<b>56</b>
<b>Grand Total</b>		<b>274.1</b>	<b>239.1</b>

The positions in Exhibit 5 are based on actual staffing assignments reported by the departments as of the date that information was collected for this report. Assignments vary regularly based on fluctuating demand, vacancies, and Family and Medical Leave Act use. The standard work week for PAO support staff is 35 hours per week while DPD support staff work a 40 hour week. For the purposes of comparison, 35 hour positions are represented as one FTE.

Attorney levels between the departments are generally similar for King County courts listed with DPD having a slightly higher total of 118 compared to the PAO’s 108. Again, the PAO handles all cases in its purview including those handled by DPD as well as private counsel and assigned counsel. At the same time, DPD must represent each defendant in a case. Each defendant receives their own attorney and is considered an assignment for crediting purposes.

The greatest attorney differential is in ITA Court where DPD has 11 more attorneys than PAO. One significant driver of this difference is that DPD attorneys travel to the behavioral health treatment centers throughout King County where their clients are located and appear via video hearings, whereas the PAO remains onsite at ITA Court on the Harborview Medical Center campus. Additionally, as described in Section III, DPD must adhere to state caseload standards. Thus, rapidly rising filings in ITA Court have led to DPD staffing increases.

<sup>8</sup> PAO as of May 1, 2019. DPD as of April 23, 2019. PAO Supervisors & Support includes co-chairs, vice-chairs, and team leads. PAO filers are allocated 60% to filing and 40% as attorneys. PAO Advocates includes advocate supervision and excludes Protection Order Advocates. DPD Superior Court includes Seattle, Kent, Drug Court, and Drug Offender Sentencing Alternative (DOSA). District Court includes Regional Mental Health Court.

Regarding support staff, PAO support staff who handle discovery and court scheduling are listed in the table separately from those who support cases. Overall, the PAO appears to use fewer attorneys and a greater proportion of support staff than DPD.

#### **IV. FINDINGS AND CONCLUSION**

As noted on page 6, King County's Code references the ABA's principle of parity of resources between public defense and prosecution. The most notable application of this principle is in attorney compensation, where parity was achieved when the Department of Public Defense was created and public defenders became King County employees.

Overall, the PAO's expenditure budget has been slightly higher than DPD's and its budgeted FTEs have ranged from 17%-33% higher. In courts in which both departments practice, DPD has slightly more attorneys while the PAO has a greater proportion of support staff. As noted earlier, because each entity has unique practice areas and functions, the PAO and DPD bodies of work generally cannot be compared for parity beyond compensation. Because parity cannot be applied to the staffing levels or workloads, this report identifies no further budget actions.