

**PUBLIC
DEFENSE
ADVISORY
BOARD 2019
ANNUAL
REPORT**

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King County

King County Public Defense Advisory Board

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INTRODUCTION

In 2018, the King County Public Department of Public Defense (“DPD” or “the Department”) represented more than 15,000 indigent individuals in courts throughout King County.¹ These clients – adults and children accused of crimes; adults and children struggling with mental illness; families separated by the State due to allegations of neglect or abuse; and parents accused of failing to pay child support – faced loss of their liberty, financial penalties and, in some cases, termination of their rights as parents. Many of the Department’s clients struggle with poverty, homelessness, addiction, a broken mental health system and the consequences of structural racism. The core work of DPD, representing indigent people who are accused, is intimately bound up with the County’s commitment to equity and social justice.

This Annual Report is prepared in fulfillment of the Board’s statutory responsibility under King County Code §2.60.031.H to issue to the King County Executive and King County Council each calendar year a report “on the state of county public defense” that includes “an assessment of the progress of the county in promoting equity and social justice related to the criminal justice system.” This is the fifth Annual Report prepared by the Board.

This year marks the first full year of Anita Khandelwal’s tenure as the Director of DPD. She was confirmed by the County Council on November 5, 2018, with strong support from the Board and DPD staff. This support continues as we look back on her first full year of accomplishments.

As reported last year, DPD attorneys and staff continue to provide high quality service for their clients. This despite an unexpected spike in felony filings beginning in July 2019—which continues to put a tremendous pressure on DPD staff. This spike in filings was discussed in more detail in the Board’s 2019 Budget Report. Still, the judges interviewed for this report found DPD staff to be competent and well-trained as they appear in their courtrooms every day on behalf of the accused.

In preparing this report, the Board:

- Met with members of the DPD Leadership Team, including the Managing Attorney from each division, and obtained information and data from the Leadership team;
- Met with the Chief and Assistant Chief Criminal Judges of the Superior Court (Seattle), Chief Judges at the Regional Justice Center and Juvenile Court, Lead Dependency Judge (Seattle), Lead Judges for Drug Court and Involuntary Treatment Courts and presiding judges of the District and Seattle Municipal Courts;
- Met with leadership from the King County Prosecuting Attorney’s Office (KCPAO);
- Reviewed the [King County Department of Public Defense 2019 Annual Report](#) (hereinafter “Director’s 2019 Annual Report”).
- Reviewed the Director’s 4-year Strategic Plan, dated March 2019.
- Reviewed the King County Auditor’s report, [Follow-up on Public Defense: Weak Governance Hinders Improvement](#), November 26, 2019;

¹ This data was obtained from the King County Department of Public Defense 2019 Annual Report.

- Gathered additional data regarding the Department’s operations.

This Annual Report will focus on the Department’s compliance with the ABA’s *Ten Principles of a Public Defense Delivery System*, comments from judges and prosecutors, progress made on the King County Auditor’s report, progress made on the 2018 Annual Report’s recommendations and the Department’s role in furthering equity and social justice. The report ends with a series of recommendations for improving the quality of King County public defense and advancing equity and social justice in the year ahead.

This report has limitations. The volunteer Public Defense Advisory Board (“PDAB”) cannot comprehensively address the “State of Public Defense” without adequate staffing. Stakeholder Interviews were limited to judges, prosecutors and DPD staff. A more comprehensive report would include information from DPD’s community partners and clients who are impacted by the legal systems.

ANOTHER YEAR OF TRANSITION

2019 was an incredibly busy year for DPD and its new Director, Anita Khandelwal. The year was marked by broad transition in leadership positions and structure. Three of the four divisions gained new managing attorneys: Northwest Defender Division (Kari Boyum), Society of Counsel Representing Accused Persons Division (Alena Ciecko) and The Defender Association Division (Ben Goldsmith). These new managing attorneys all rose from the ranks within DPD. In addition, Scott Ketterling replaced retiring Burns Peterson as Assigned Counsel Coordinator and Gordon Hill became Deputy Director following the retirement of Rick Lichtenstadter. Following the strategic planning process, Director Khandelwal developed and implemented a permanent DPD leadership structure. The new Leadership Team includes Special Counsel for Affirmative Litigation and Policy (La Rond Baker); Special Counsel for Civil Policy and Practice, Training, and Employee Development (Tara Urs); Special Counsel, Criminal Policy and Practice (David Montes); Assistant Special Counsel (Katie Hurley), and Training Coordinator (Abbey McMahon). These individuals joined Chief Financial Officer Laura Federighi and Operations Manager Melanie Oberlander to round out the DPD management team.

DEVELOPING AND IMPLEMENTING A STRATEGIC PLAN

After her appointment in November 2018, Director Khandelwal immediately began a strategic planning process which engaged DPD staff at every level and in every unit and division across the county. Following dozens of meetings across the Department, an ambitious four-year strategic plan was finalized that reflects the vision of DPD staff.

The strategic plan identifies three strategic objectives:

Strategic Objective 1: Provide consistent high-quality representation to all of DPD’s clients across all divisions and all case areas, thereby becoming a national model for public defense.

Strategic Objective 2: Partner with the community to dismantle the systems that oppress our clients and advocate for pathways that will allow them to succeed. Where traditional systems remain, use our community partnerships and expertise to make them less harmful and more restorative.

Strategic Objective 3: Recruit, support and retain a highly skilled and diverse workforce and develop a respectful and inclusive workplace culture.

The strategic plan also identifies specific goals, tactics and milestones to be accomplished. As outlined further in this report, DPD is on track to meet its strategic objectives.

QUALITY OF PUBLIC DEFENSE SERVICES

COMPLIANCE WITH ABA'S TEN PRINCIPLES

The American Bar Association's *Ten Principles of a Public Defense Delivery System* "were created as a practical guide for government officials, policymakers, and other parties" to use as "fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney." King County expressly adopted these principles in 2013 by including among the county public defender's duties responsibility for "[e]nsuring that the American Bar Association Ten Principles for [sic] a Public Defense Delivery System . . . guide the management of the department and development of department standards for legal defense representation. ..." KCC §2.60.026 (4). The King County public defender is required to file an annual report on the Department's efforts to comply with the Ten Principles, and she did so in her 2019 Director's Report, dated May 21, 2019 by referencing the PDAB's 2018 Annual Report's findings.

The PDAB makes the following observations with respect to (DPD's ?) compliance with the Ten Principles:

Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.

Board Comment: The Department functions independently of political and judicial supervision or interference. Overall management of the Department, including hiring of attorneys, interns and staff, and the development of departmental policies, procedures and guidelines is conducted by the Director or the Director's designees. The Board is aware of no political or judicial interference in the day-to-day operations to either the departmental or divisional levels of the Department of Public Defense.

DPD is required to propose and advocate for social justice policies which affect its clients and the criminal justice system. DPD has taken positions on criminal and juvenile policies, advocated for its budget and made hiring decisions without interference by County officials. In 2018, there was a significant test of departmental independence on policy issues from the County Council and the Executive as well as the County Prosecuting Attorney's Office. In July 2018, the issue of the Department's independence came to the forefront when then-Interim, now Director Anita

Khandelwal joined a coalition of community groups in calling for a moratorium on building the new Children and Family Justice Center.² The position was contrary to the one held by most members of the Council and by the Executive. Interim Director Khandelwal took this position on behalf of DPD after consulting with her leadership team and with juvenile practice experts on her staff – those who have extensive direct experience working with the children and families impacted by the new building. The Board approves Director Khandelwal doing what an independent defender must do – speaking out on an issue relating to equity and social justice that affects the Department’s clients – even when doing so goes against the position of other County officials.

There is no evidence the Executive or Council took any budgetary or other action against DPD or the Director as a consequence of DPD taking a public policy position with which they disagree. In fact, Acting Director Khandelwal was appointed and confirmed as Director by the Executive and County Council after she took the position in opposition to the Children and Family Justice Center. This episode serves to highlight the importance and challenge of protecting the independent role of the Public Defender. The King County Prosecuting Attorney is indisputably – and appropriately – a prominent voice on a wide range of policy issues affecting the justice system. In taking these positions, he advances the priorities of his office and enhances its ability to achieve its objectives on a daily basis. Although not a separately elected official, the Director of the Department of Public Defense must have the ability to serve as an equally strong and clear voice on important issues that affect the Department’s clients and their communities. The current County Prosecuting Attorney agrees, as does the current County Executive and the majority of the current County Council, that the DPD Director properly asserts independent policy positions.

Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Board Comment: Principle 2 addresses the need for a coordinated plan for the active participation of the private bar where caseloads are sufficiently high, as is the case in King County to require outside appointment of counsel. Public defense work inevitably creates many conflicts of interest which require assignment of cases to outside private counsel. The range of repetitive conflict problems requires an active and competent outside private counsel assignment panel. Beginning in 2016-17, DPD has included outside counsel in training and has begun setting standards for outside assigned counsel. Those standards, according to judicial comments, have substantially improved panel representation. The assigned counsel panel in King County handles cases when conflicts of interest prevent the divisions from representing the client or when DPD attorneys are at capacity and additional assignments would violate caseload standards. Comments from judges interviewed for this report suggest that the quality of representation by the assigned counsel panel has improved and is generally consistent with that provided by DPD staff attorneys.

² *Opposition to King County youth jail grows as immigrant-rights group joins effort to halt construction*, Seattle Times, July 17, 2018.

In our 2017 Annual Report, we found the County did not comply with Principle 2 because it failed to adequately fund the assigned counsel panel. The 2019-2020 County budget provided for a much-needed and long-neglected increase in the rates paid to assigned counsel; however, as outlined in the board's 2019 Budget Report, more must be done to attract and retain quality conflict counsel.

Principle 3: Clients are screened for eligibility and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

Board Comment: Although the former, not-for-profit corporations that preceded the creation of the Department of Public of Defense had differing policies about face-to-face contact with clients at the earliest possible opportunity, the Department has set a requirement that face-to-face contact, particularly for in-custody clients, take place *prior* to arraignment and/or first appearance. That standard complies with national standards. New procedures that became effective in 2017 added telephone financial screening to in-person screening of applicants for appointed counsel. This enhancement provides a more efficient, expedited process, but the quality of the process and the extent to which it has shortened the time from arrest to assignment of counsel and to a face-to-face meeting between attorney and client remain to be assessed. The Department's data collection mechanisms specifically will be analyzed to document compliance. This is a positive development in achieving greater compliance with Principle 3.

Principle 4: Defense counsel is provided sufficient time and a confidential space within which to meet with the client.

Board Comment: Department policy requires counsel to meet with in-custody clients within 24 hours of being assigned the case and well before any court appearances. Private meeting space is available at jails and courthouses where defense counsel, paralegals, investigators, and mitigation specialists can meet with clients in confidential settings – but there is a critical exception.

There is a structural issue in first appearance calendars that are held under time constraints which do not allow for adequate critical-stage client consultation and advice. Currently, court time allocation for these calendars does not take into account the changes in competent preparation and advice constitutionally required. Washington Appellate Courts addressed the 6th Amendment failure of inadequately investigated and advised pleas at arraignment. See, *In Re PRP of Burlingame*, Washington Court of Appeals Slip Opinion filed May 17, 2018. The speed of first appearance calendars and scheduled available time for individual first appearance calendar consultations prevent full compliance with this policy sufficient to satisfy current Sixth Amendment constitutional standards.

The King County Jail courtrooms, where in-custody arraignments for those charged with misdemeanors and initial appearances take place, have limited space to allow for confidential meetings between DPD attorneys and their clients. DPD has collaborated with the Department of Adult and Juvenile Detention to ensure that attorneys representing clients on the King County District Court first appearance calendar in KCJ 1 have adequate privacy to consult with their clients.

The King County Jail Court Two (“KCJ 2), where Seattle Municipal Court in-custody arraignments are held, presents more significant Sixth Amendment challenges. Calendars are created the morning of arraignment. DPD attorneys meet in a hallway, where jail staff are within hearing distance and other attorneys are also meeting with clients. It is not private or confidential. These meetings take place right before arraignments and initial appearances – where judges make critical pre-trial release decisions. The decision to set bail or release a defendant pre-trial will have a significant influence over the outcome.³ Not providing adequate time or space for misdemeanor attorneys to meet with their clients at a critical stage in the proceedings demonstrates that, at least with respect to Seattle Municipal Court cases, Principal 2 is not being met.

There continues to be little office space at the Involuntary Treatment Court for attorneys and staff; however, video hearings have resulted in less need for attorneys to be at the court. ITA attorneys have access to office space at the various hospitals where they practice. Interviews with the Involuntary Treatment Court Lead Judge indicate that there is little privacy in negotiations because of the physical layout of the Court, which results in the judge often overhearing discussions between prosecution and defense about pending matters. While not perfect, there is generally space to speak confidentially with clients in the various hospital units.

Principle 5: Defense counsel’s workload is controlled to permit the rendering of quality representation.

Board Comment: DPD has been complying with the State Supreme Court-mandated caseload standards (developed in 1973) through a staffing model that was developed in 2015 by a task force led by the Director of the County’s Office of Performance, Strategy, and Budget and that included representatives of the Department and the PDAB. The Board believes that applying this staffing model and the supplemental credit system resulted in compliance with the 1973 caseload standards. However, after a number of years of applying the model, it is also clear that adjustments to that staffing model may be required, particularly in light of the recent spike in felony filings that resulted in an increase in cases going to conflict counsel for capacity reasons and the changing workload created by huge amounts of video discovery produced through body-worn cameras. This increased discovery impacts attorneys, investigators, mitigation specialists, and administrative staff. Also comments from judges highlighted that there may be a lack of investigative and mitigation resources for defenders and their clients.

The Board is concerned that caseload standards alone, to the exclusion of complex case credits, case allocation issues arising from family leave release, vacations, and fluctuating case filings from the Prosecuting Attorney’s Office, have a negative impact on proper case management and allocation which cannot be measured solely by numbers of cases assigned per lawyer. This will be a matter of continuing concern and discussion.

³ A recent study in Harris County, Texas, found that misdemeanor defendants detained pre-trial are 25 percent more likely than similarly situated releasees to plead guilty, are 43 percent more likely to be sentenced to jail, and receive jail sentences that are more than twice as long. Paul Heaton, Sandra Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pre-trial Detention*, 69 Stanford L. Rev. 711 (2017).

Principle 6: Defense counsel’s ability, training, and experience match the complexity of the case.

Board Comment: In addition to certifying compliance with the basic professional qualifications in Standard 14.1 of the Washington Supreme Court Standards, an attorney representing a defendant accused of a Class A felony must also certify that he/she meets the experience requirements set forth in Standard 14.2. Managing attorneys in each of the four divisions are responsible for ensuring these standards are met. More interviews with judges and the Prosecuting Attorney’s Office confirm that the quality of representation provided by Department attorneys is good and, while individual concerns have been expressed as to *specific* lawyers, most concerns have been addressed.

Despite the generally very positive reports as to the quality of defense services provided by Department lawyers, significant changes have been made to the training program. Major changes focus on staffing. A list of trainings provided to the Board as an attachment to the Director’s 2019 Report shows that the current training process is extensive, robust, and reflected in the judicial and adversarial evaluations.

Principle 7: The same attorney continuously represents the client until the completion of the case.

Board Comment: DPD attorneys are assigned to represent each client at all stages of his/her case through trial with the exception of the initial appearance (e.g., arraignment calendar) at which a calendar lawyer may represent the client. It has been DPD’s policy for quite some time to do “vertical” representation other than the initial calendar appearance. That standard continues to be fully met.

Principle 8: 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.

Board Comment: Parity with the Prosecuting Attorney’s Office is an issue that was raised while negotiating the most recent collective bargaining agreement signed by SEIU and the County in March 2018. Salary parity has largely been reached between similar job classifications. Identifying other criteria to determine parity with the Prosecutor’s Office has proven quite difficult to define and implement. A recent King County Office of Performance, Strategy, and Budget report about parity between the Prosecuting Attorney’s Office and the Department of Public Defense, dated July 8, 2019, recognizes that no common definition of office function can be easily established. Each office has substantially different functions from the other. More nuanced definitions of parity, other than salary-by-position parity, which has largely been achieved, still need to be developed. There appears to be substantially greater supervisory and support staff in the Prosecutor’s Office than in comparable DPD divisions other than ITA. Issues which remain to be resolved are the number of senior attorney slots between the two departments and whether or not they should be relatively equal in number; how to reach parity for defense investigators either in number or salary when compared to the police agencies available to the prosecution, etc. The Board has undertaken a project to determine a definition of “parity” other than salary parity which may be useful in future budgeting decisions.

To the extent “parity” means “equal partner” in the justice system, the Department through its Director and designees participates regularly in criminal justice initiatives and reform efforts. The King County Prosecuting Attorney’s Office has emphasized its desire to further partner and collaborate with the Department on systemic reforms. The Board encourages such cooperation and joint presentation where feasible.

Principle 9: Defense counsel is provided with and required to attend continuing legal education.

Board Comment: Professional training is a high priority for the Department, and substantial resources, both human and financial, are devoted to providing opportunities for attorneys and non-attorney staff alike. Many in-house CLEs took place in 2018 and 2019, as documented in the 2019 Director’s Report. Training is a priority for Director Khandelwal, who has encouraged higher utilization of in-house expertise. DPD attorneys and staff are encouraged to also attend Washington Defender Association and Washington Association of Criminal Defense Lawyer trainings as well.

Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Board Comment: In the past year, DPD has increased the use and dissemination of data to supervisors and managing attorneys to assist them in reviewing attorneys’ work. DPD’s collective bargaining agreements, as well as the Washington State Bar Association standards, set forth a requirement that each agency providing public defense services provide one full-time supervisor for every 10 staff lawyers. This results in supervisors often carrying cases in addition to their supervisory duties. Comments from judges as well as managing attorneys suggest that the formulas for supervising attorneys and staff should be reviewed.

COMMENTS BY JUDGES AND PROSECUTORS

In preparation for this report, members of the Board consulted with a number of judges and the King County Prosecuting Attorney’s Office pursuant to its obligation under King County Code §2.60.031.B. Board members met with the Superior Court criminal presiding judges in Kent and Seattle, the Assistant Criminal Presiding Judge in Seattle, and the lead judge in the Involuntary Treatment Court, Juvenile Court, and Drug Diversion Court. Board members also met with the King County District Court and Seattle Municipal Court presiding judges and with the King County Prosecutor and his Chief Criminal Deputies. Finally, Board members met with the managing attorneys for each of the four divisions and with the Director of the Department as well as the outgoing Deputy Director and the incoming Deputy Director.



Janna Richards, Investigator

DPD's client was facing up to six years in prison for assault, but a key eyewitness could not be reached despite repeated efforts by Janna Richards, an investigator at ACAD. She went out to the witness's home and left her business card at the door. When she didn't hear back, she asked her supervisor, Bettye Witherspoon, for a CLEAR search, a sophisticated online platform which provides hard-to-find information, and got the woman's number. She left several messages, hoping the witness would feel comfortable talking from the privacy of her home. Finally, with the trial only days away, the witness appeared at the courthouse in response to a subpoena Janna mailed to her, and provided her cell number. Janna contacted the witness and the two agreed to talk. The witness called on a Saturday afternoon while Janna was at a pizzeria with her family. Janna walked out to her car, phone in hand, and interviewed her on the spot, learning things from the witness that indicated the victim had been untruthful in her account. Janna and Bettye also interviewed the victim and found holes in her story. When the prosecution was presented with the information on the eve of the trial, they dismissed the case.

A number of themes were evident as a result of the discussions with the Courts, the Prosecuting Attorney's Office ("PAO") and DPD managing attorneys. The first theme is DPD attorneys are overall providing high quality representation to their clients. A related issue is inconsistency in that representation. The second theme revolves around the sufficiency of investigative services at DPD and the Department's ability to properly and promptly investigate the pending cases. This theme also implicates the larger issue of the DPD staffing model. The third theme is a perceived unwillingness of DPD leadership to collaborate with the Courts.

INVESTIGATION: A CRITICAL FUNCTION OF PUBLIC DEFENSE

For the second year in a row, the Board heard from judges that they frequently hear, in the context of motions to continue, that the assigned investigator has not yet had the time to complete the investigation.

This issue serves to highlight a larger DPD issue -- the staffing model. The staffing model is out of date and does not accurately reflect the staffing necessary for DPD. DPD has been working to make changes to the staffing model. The staffing model includes a ratio of one investigator for every four attorneys. That ratio fails to consider the increased need for investigative work in criminal cases today, especially investigator work necessitated by the increasing use of car and body cameras.

The defense investigator's role is to work with the attorney and gather evidence which either supports the defense case or challenges the State's case. This work includes finding, contacting and interviewing witnesses; visiting and photographing the scene of the incident; and examining any physical

evidence obtained by the police. The investigator must also review the discovery in the case, i.e., the police report, and be knowledgeable of the facts and allegations of the case. Over the past few years this work has taken on an added dimension: listening to or viewing hours of phone calls or video, including body cam video. The phone calls are frequently calls made by the client while in custody and may form the basis of some of the charges. All this evidence must be reviewed by the investigator to accurately determine the nature and scope of the evidence. The lack of a sufficient number of staff investigators delays resolution of cases and frequently requires clients to remain in custody for longer periods of time.

SUPERVISION AND TRAINING: KEY COMPONENTS OF PROVIDING CONSISTENT QUALITY REPRESENTATION

DPD leadership detailed some of the approaches they are taking to ensure consistent quality representation throughout the Department. DPD is now able to generate more detailed data regarding those aspects of the attorney's work that are quantifiable. DPD has generated data that shows, among other things: the trial rates of the attorneys, including whether the trial result was positive or negative for the client; the plea rates, including whether it was a plea as charged or a plea to a reduced charge; the dismissal rates; the conflict rates, i.e., withdrawal from a case based on a conflict; the attorney's use of investigators and social workers; and the percentage of case credits from case assignments as opposed to supplemental credits, which are earned at hourly thresholds. The ability to track outcomes, however, varies by practice area. Because of flaws in the initial design of DPD's case management system, important case events in civil practice areas are not measured in a way that can generate usable data.



Emma Rancich: Investigator

Emma Rancich, in the SCRAP Division, recently developed an almost encyclopedic understanding of motocross in her effort to help a client facing a misdemeanor assault charge that could have resulted in a year-long jail term. The division was representing a respected motocross professional who was charged with assault after he forced an unsafe patron off the track. The police did very little investigation. Emma did just the opposite. As part of her investigation, she learned the ins and outs of safety protocols; developed scene views showing what kind of danger everyone was in because of the alleged victim's actions; shot video of an event at the facility; and interviewed enough people to allow the attorneys to demonstrate to the jury what happened. The information she gathered, including a multi-media presentation she put together for the defense team, helped them immeasurably in the case, said John Randolph, the attorney for the client. The jury found DPD's client not guilty with a self-defense reimbursement, meaning he's owed \$8,000 for time lost for the prosecution – a huge victory, he said. "She provided amazing assistance," John said. "There's no question that her investigation made the difference."

DPD has not set any baselines regarding this data. DPD does not determine what the appropriate trial rate should be. The comparisons are simply between all the attorneys at DPD, across the four divisions. The data is shared with the divisions and is intended to be a tool for the supervisors. Previously, supervisors did not have access to that type of information, particularly information that encompasses all of the attorneys in DPD, across the four divisions. The supervisors can use that data to further evaluate the work of the attorneys they supervise. Data in this context is not determinative. Trial rates alone cannot identify those attorneys whose work is quality or those whose work is lacking. It is nonetheless valuable information when used in conjunction with other data, including observations of the attorney in court, discussions with the attorney and a review of the attorney's written work, among other things.

Judges and a number of Managing Attorneys discussed the issue of supervision. One judge advocated for giving supervisors a greater role in each individual attorney's work on their assigned cases. Some of the managing attorneys expressed a twofold goal regarding the supervisors. The first is to decrease the cases the supervisors were handling themselves to allow the supervisors to better focus on managing their attorneys and identifying and correcting any performance issues. The second is for the Managing Attorneys to provide greater supervision of the supervisors. All of these changes would require additional staff; for supervisors to spend more time supervising individual attorneys, they need fewer supervisees. For Managing Attorneys to better supervise their supervisors, Managing Attorneys need to be able to delegate administrative work.

DPD is also addressing inconsistent attorney performance by providing the training necessary to assist the attorney in improving their work. DPD training has improved and is well thought of by the Managing Attorneys. One Managing Attorney stated that the training provided is “. . . substantial and useful training that people can attend.” Another Managing Attorney made similar comments. It is worth noting that training needs vary across the Department. While it is relatively easy to offer accessible trainings that update professionals on new developments in the law or discrete new skills, it is far more challenging to change existing, long-standing practices. Actually changing practice requires a coordinated effort to provide intensive training, opportunities to practice new skills, and ongoing supervision. Therefore, to the extent that addressing inconsistency in attorney practice is a goal, it is related to concerns regarding caseloads and supervision expressed elsewhere.

The final change necessary to ensure the attorneys are providing consistently high-quality representation is setting standards and expectations for attorneys. The Washington State Bar Association has produced performance standards for indigent defense which help guide the work of the DPD attorneys. However, DPD is working to augment those standards to provide greater guidance to all the attorneys at DPD.

COLLABORATION: WORKING ON SYSTEMIC CHANGE

The final theme concerns DPD's collaboration with the Courts. A few judges expressed some frustration with DPD leadership. The gravamen of their concerns was that DPD was not working with the Courts on a variety of issues to the detriment of individual clients and the system as a whole. These issues included DPD's objection to construction of the Children and Family



Tom Riley and Gary Shaleen: ACAD Investigator and Paralegal.

In a complex murder case, there is rarely one thing that leads to an acquittal. But attorney Matt Sanders said the diligence and thoroughness of investigator Tom Riley and paralegal Gary Shaleen brought to a high-profile case earlier this year was critical to the team’s success. Their client was charged with murder after a construction worker was shot and killed in the parking lot of a motel. Tom and Gary spent hours poring over videos from the motel, piecing together a timeline by looking at timestamps on the footage and demonstrating the defendant wasn’t in the parking lot when the shooting occurred. Particularly noteworthy was a hard-to-read image Tom discovered of someone going over a fence and leaving the parking lot 90 seconds before the shooting. Tom and Gary were able to show that the “blip,” as they called it, was their client – by identifying his location in other time-stamped footage and timing how long it would take to get from the motel exit and across the parking lot to the fence and to his car on the other side of the fence. “I don’t know that we could have won without Gary and Tom,” Matt said. “They were a remarkable duo.”

Justice Center, its resistance to the structure of Community Court, its objection to the CCAP program (pre-trial services) capital expenditures in Kent, and the DPD Director’s observation there should be divestment from the criminal legal system.

DPD leadership has a different perspective regarding its collaborative efforts. While DPD has put significant energy into working with the members of the criminal legal system, DPD’s opposition to certain judicial proposals is not borne of obstruction but of an understanding that it is the county agency solely responsible for protecting the rights of the individuals charged with crimes. Consistent with its strategic objectives, DPD seeks to prioritize community partnerships and expertise to improve the system. The Managing Attorneys all indicated that DPD staff uniformly supports the Leadership Team’s positions. DPD cannot sacrifice its obligation to its clients for changes or perceived efficiencies in the system that do not benefit clients or will cause them harm.

WORKFORCE

BASIC STAFFING INFORMATION

DPD has a workforce of over 415 people, who either directly or indirectly support DPD’s 15,000 plus clients through 4 separate divisions. According to data provided to the Board by DPD:

- 63.4% of DPD staff identify as female
- 36.6% of DPD staff identify as male
- 31.1% of DPD staff identify as non-white

Attorneys tend to be the least racially diverse group within the Department, with 21.7% identifying as non-white. DPD has made efforts to recruit a more diverse class of legal interns – by attending a variety of minority job fairs and on-campus recruiting events at law schools in

different parts of the country. The 2020 class of summer interns includes 19 second year law students, 9 identifying as persons of color.

This year's hiring process revealed that DPD is a very desirable place for new attorneys to work, with hundreds of highly qualified applicants from around the country applying for summer internships and new attorney positions.

FOLLOW-UP KING COUNTY AUDITOR'S REPORT

The Auditor's Office recently released a follow up to the audit of DPD conducted in 2018. The follow-up audit details the DPD's significant progress in addressing the issues raised in the 2018 audit. The follow-up audit states DPD has completed two of the recommendations listed in the 2018 audit and has made progress on ten of the recommendations. There is only one recommendation which remains unresolved. The Auditor's office will no longer monitor the completed recommendations but will continue to monitor those that have not yet been fully implemented. The report is clear that there is still work to be done but the key takeaway from the follow-up audit is the progress that DPD has made.

The overarching issue addressed by the follow-up audit is DPD's development of a strategic plan. The report notes that the strategic plan will set the direction for the implementation of many of the recommendations in the 2018 audit. The report states DPD has made considerable progress in creating a plan that outlines DPD's strategic objectives, goals and priorities.

Most of the remaining recommendations fall largely into two categories: 1) Employee expectations and guidance; 2) Data-sharing, consistency and reliability. The follow-up audit found that DPD has made progress in all of these areas.

The first category encompasses case management standards, adjustment of the staffing model to incorporate those standards, policies regarding employee expectations and implementing performance measures. The first aspect, case management standards, has been completed. DPD has established guidelines for the use of supplemental credits. The follow-up audit notes that progress has been made and the use of these guidelines to inform the staffing model is still ongoing. This is a long-term issue as DPD is currently examining a number of metrics to construct the optimal staffing model.

The follow-up discusses the progress that has been made in the areas of employee expectations and performance measures. These issues also arose in the conversations with the judges. The follow-up states DPD has developed succinct performance standards and employee evaluations. DPD has also begun to develop more comprehensive case practice guidelines. The audit notes that DPD has relied on the Washington State Bar Associations' performance guidelines, and as noted in the section addressing feedback from the courts, is seeking to augment those standards. The follow-up audit suggests only that DPD complete this process.

The issues regarding data are far-reaching since they impact much of DPD's decision making. The follow-up audit found DPD has also made progress in that area. DPD has set standards regarding data entry, e.g. time entry and closed cases, and reviews that data to ensure its

accuracy. DPD has also improved its internal communication regarding data entry, which has improved both the reliability of the data and the sharing of data from the divisions with the Director's Office. The follow-up found DPD has sufficiently improved the data sharing and has fulfilled the recommendation listed in the 2018 Audit.

The only issue which the follow-up noted there was not significant progress was in regard to a training program. The follow-up stated that DPD needs to develop a training program, communicate it to staff and connect it to the performance measures. This is an issue on which DPD is working. DPD recently hired a training coordinator. The expectation is that DPD will soon make significant progress towards a detailed training program.

EQUITY AND SOCIAL JUSTICE

The report on the state of county public defense shall include an assessment of the progress of the county in promoting equity and social justice related to the criminal justice system and may include recommendations for advancing equity and social justice.

DPD staff advance equity and social justice every day as they protect the rights of indigent individuals facing jail, involuntary commitment or separation from their families. This past year, DPD also took a proactive role, alongside other community members and stakeholders in pressing for structural solutions to the systems that are processing and jailing DPD clients—



Aimee Martin: Mitigation Specialist

Thomas avoided eye contact and mostly mumbled to himself when Aimee Martin, a mitigation specialist at TDAD, began working with him. Suffering from mental illness, he had been locked in the Special Commitment Center on McNeil Island for nearly seven years, awaiting trial for a civil commitment repeatedly delayed due to the complexity of his case. Aimee was patient. She visited him often, slowly getting to know him. They developed a rapport. He lit up when she arrived for a visit. In advance of his trial, she began to develop a release plan that might convince a judge he didn't need to be civilly committed, but she knew finding housing for him would be hard. She called one place she thought might consider him – a faith-based housing program – and told the pastor who ran the program all about Thomas and what she saw in him. He agreed to interview him. Aimee spent a lot of time prepping Thomas, and when the interview finally took place, he spoke calmly and answered all the questions. The next day, the pastor said they'd house him. Aimee began putting other pieces in place. She got him signed up for Social Security and Food Stamps. She taught him how to do things like use a debit card. Lynn Schultz, an investigator, also helped, learning more about his medical history and tracking down family members who didn't even know he was alive. When they presented the plan to the state, the prosecution dropped the case, and Thomas was released. "With the placement and the various supports Aimee had in place, [the prosecution's expert] said he could no longer state that the client met the criteria under the state statute to be held," according to Devon Gibbs, interim supervisor of TDAD's special offender unit. Aimee stays in touch with him and his team at the housing program, who say he's doing well. Devon is still amazed by the outcome. "He had a lot of strikes against him. But Aimee put together a plan with enough supports for him to live free in the community."

and pushing back against systems that were not designed to address the root causes of their behaviors.

Some highlights include:

Partnering with Community and other allies to advance the policy interest of DPD clients

- DPD worked closely with the Mockingbird Society and the King County Executive to advocate for an end to the incarceration of young people accused of status offenses. As a result of this advocacy, the legislature passed SB 5290, which phases out the incarceration of young people accused of status offenses over the next three years.
- DPD partnered with the ACLU and Disability Rights Washington to demand that the ITA court stop strapping DPD clients awaiting hearings at Harborview Hall to gurneys. As a result of this advocacy, the court has agreed to make individualized determinations regarding the need for such restraints.
- In response to concerns articulated by community partners, DPD proposed policy changes to the Department of Adult and Juvenile Detention (DAJD) on strip searches and family visitation. Strip searches can cause youth to experience anxiety and depression and can be re-traumatizing for those who have survived sexual abuse.⁴ DPD has requested that DAJD limit the use of invasive strip searches on youth to instances where there is a reasonable suspicion of contraband. DPD has also requested that DAJD expand its visitation policy beyond the current policy which restricts visitation to three 30-minute visits per week with parents, guardians and siblings under 8 years old. DPD has requested longer and more frequent visits, as well expanding eligible visitors to include aunts, uncles, siblings and supportive community members such as teachers and mentors.

Partnering with Community in Litigation to Advance the Interests of DPD Clients

- DPD is appealing a case on behalf of a Native American client whose children were removed from his care. The client sought to challenge the findings at the shelter care hearing, which failed to afford his family the protections of the Indian Child Welfare Act. In particular, the court found there was no “reason to know” that the children were “Indian Children” as understood under the law. That finding was subsequently affirmed on appeal in a decision that was so concerning that DPD is seeking reconsideration in the Court of Appeals. DPD’s petition for review will be supported by four amicus briefs – among them, one by the Northwest Justice Project and another written by Kate Fort of the Indigenous Law and Policy Center at Michigan State University College of Law on behalf of the Central Council of the Tlingit and Haida Indian Tribes of Alaska

⁴ An estimated 75-93% of youth who enter the legal system have experienced trauma. An estimated one-third of girls in the juvenile justice system have survived sexual trauma. Justice Policy Institute, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense*, (2010).



Vanessa Schmidt: Mitigation Specialist

The prosecutor had already made it clear she would not budge on a plea offer for one of NDD’s clients, a young man facing 7 to 9.5 years in prison, when Vanessa Schmidt was assigned to the case. A newly hired mitigation specialist with a background in street outreach work, Vanessa was determined to write a mitigation report that had depth and breadth, and captured the full sweep of this man’s trauma-filled life. She interviewed him a few times, learning about the gun violence he witnessed from an early age. She noted the number of young men in his circle who had died due to gun violence, including his best friend. She talked to his partner, with whom he shared a new baby, and researched the impact of parental incarceration on children. She unearthed statistics on gun violence involving youth of color in King County – or, as she put it, “his reality as a young black kid growing up in a low-income neighborhood in Seattle.”. After reading Vanessa’s report, the prosecutor made a new offer – two fewer years in prison. What mattered most to Vanessa is the client felt the report told his story well and authentically. “We went back and forth until he felt 100 percent that it was his story,” she said. “That was the most important piece to me – that it felt like it was his story and that we had done our best for him.”

- DPD has sought discretionary review of the State’s decision to remove a child from a treatment facility where the child was thriving to a different facility out-of-state. The underlying issue is whether dependency courts are empowered to block the State’s ability to move a child into a placement that the Court finds to be harmful. The State’s current position is that once the child is placed in licensed foster care, that placement is unreviewable—even if it’s in a restrictive facility out of state. DRW is an amicus in this case.

Providing information to client communities.

Through a county Equity and Social Justice grant, DPD produced two videos to provide practical information to individuals and families. The first, [“Know Your Rights When You are Stopped by the Police,”](#) was produced in partnership with Creative Justice and highlights the expertise of young people who have experience interacting with police. The second video is [“What to Do If Your Child is Removed by CPS,”](#) which features the experiences and expertise of parents who have been represented by DPD in child welfare proceedings. Both videos are available on DPD’s website, Facebook page and YouTube. Both videos allow DPD to connect with their client communities outside of the courtroom in a way that will hopefully help people understand how to better navigate complicated legal systems. In addition to these videos, DPD staff attended community outreach programs, gave Know Your Rights presentations to youth, and made other presentations on issues such as “Alternatives to Calling the Cops” sponsored by the Seattle Public Library Foundation.

Educating the public.

To achieve equity and social justice, it is paramount that the public understand the ways that the criminal and juvenile legal systems impact DPD clients. To this end, DPD's Director of Communications Leslie Brown has had a tremendous positive impact in furthering DPD's commitment to its clients and to equity and social justice by helping DPD communicate through traditional and social media. In 2019, DPD leadership addressed a number of issues of import to its clients by speaking out and giving voice to the interests of those who are often voiceless. Through Op-Ed pieces, DPD leadership addressed the [harms of jailing runaway youth](#), the way [low juror pay hurts jury diversity](#), the [injustice of cash bail](#), and how investing in misdemeanor [probation does not produce better outcomes](#). Through other investigative news pieces, DPD staff were able to help educate the public on how the criminal legal system is working with respect to misdemeanor theft enforcement⁵, court-imposed costs⁶, youth sentencing,⁷ the definition of rape,⁸ and the long-term impact of criminal convictions.⁹

Assisting clients with the long-term consequences of a criminal conviction.

In its 2019-20 budget, the County funded DPD for a post-conviction unit – which has allowed DPD to dedicate a paralegal and attorney to assisting former clients vacate eligible criminal convictions so that they can improve their chances at securing stable employment, housing and education. This work is critical to equity and social justice, as it gives people who have completed the terms of their sentence the opportunity to rebuild their lives.

Advocating for Juror Pay.

DPD joined the ACLU in filing an Amicus brief in a case now pending in the Washington Supreme Court on the issue of low juror pay (*Bednarczyk et al v. King County*). Juror pay in King County is \$10 per day, an amount that has remain unchanged since 1959. Unsurprisingly, this results in juries that exclude people who cannot afford to take a day off from work, pay for child care or risk losing employment for taking days off. The results are juries in King County that are overwhelmingly white, which [research](#) shows can have a significant impact on a defendants' right to a fair trial.

Creating more opportunities for youth who turn 18 while in foster care.

The Washington State Department of Children, Youth, and Families (DCYF) underwent a rulemaking process for the Extended Foster Care program, a state program that provides benefits to dependent youth after they turn 18 and until they are 21. DCYF originally proposed making incarcerated youth ineligible for the additional support. DPD, others in King County, and several community partners, including Team Child, A Way Home Washington, and the Mockingbird

⁵ [A Homeless Man Steals Clothes from a Seattle Goodwill, goes to jail. His story isn't unusual](#), KUOW, 4/17/2019.

⁶ [Despite reform attempts, court-imposed costs burden low income defendants](#), Seattle Times, 7/14/2019.

⁷ [Manifest Justice](#), KCTS, 2019.

⁸ [How do we define rape? And should that change?](#), KUOW, January 31, 2019.

⁹ [Public defenders to help some in King County remove 'Scarlet Letter' of criminal conviction from their record](#), Seattle Times, 3/11/2019; [Can your criminal conviction be cleared? Pub Defense wants to help](#), KUOW, 3/12/2019.

Society, argued that to deny this support to incarcerated youth ran contrary to the statute's legislative intent and would harm our most vulnerable youth clients. Through efforts by DPD and its partners, the final rule adopted incorporated language that includes youth who are incarcerated. *See* WAC 110-90-0040.

Taking steps to address jail accessibility for clients and their families

In partnership with Disability Rights Washington, DPD advocated for clients who are part of the deaf or hard of hearing community – who were limited by the regular phones at the jail. As a result, the Department of Adult and Juvenile Detention (DAJD) took positive steps to install new accessible phone systems in both county jails. In addition, through the dedicated advocacy of a DPD intern, the County installed free lockers for visitors in both jails, reducing barriers for low income individuals who wish to visit their family members and previously were required to pay 50 cents to store their belongings. These relatively minor changes can make a big difference for clients and their families.

RECOMMENDATIONS

THE DEPARTMENT'S PROGRESS IN ADDRESSING THE BOARD'S 2018 RECOMMENDATIONS

1. The Department should develop and apply a comprehensive strategic plan with goals, objectives, strategies, and activities that address quality and consistency for clients and the effective use of County resources. (Concurring with the King County Auditor and renewing 2017 PDAB Recommendation #3.)

Board Comment: As stated previously, the Department undertook a strategic planning process and released a detailed plan. According to the King County Auditor's follow-up report:

DPD has made considerable progress toward creating a strategic plan outlining the department's strategic objectives, goals, and priorities. The draft strategic plan identifies key areas and activities which may help to ensure quality and consistency for its clients. In addition, it bolsters DPD's ability to plan, prioritize, and mobilize resources toward its goals. The DPD Director's Office stated that staff has been engaged in creating strategic governance documents.

2. The County must dedicate the appropriate resources necessary to implement an accurate case management and data collection system within DPD. This is essential not only for efficient staffing of cases and compliance with Supreme Court-mandated caseload limits, but to allow the Department and the County to identify and timely address trends bearing on the allocation of resources within DPD. In its prior Annual Reports, the PDAB noted

the importance of collecting accurate data. While there has been some progress over the past four-plus years, the current capability remains inadequate. (Concurring with the King County Auditor's Report and renewing 2017 PDAB Recommendation #4).

Board Comment: After months of work by DPD staff, King County Information Technology (KCIT) recently published the request for proposal (RFP) for a new case management system. This is a significant milestone in the Department's effort to replace its current system with one that works better for collecting accurate and consistent data. A team from KCIT and DPD will review the proposals and invite finalists to present live demonstrations that will be reviewed by staff representing every division and nearly every job classification at DPD, with hopes to have a new system in place in 2020.

3. The Department should identify the numerical measures that would be most informative for measuring the work of defenders and support staff and begin collecting that data. The Board also recommends that DPD continue to develop a more robust evaluation process that is consistent across all divisions and that examines the work of the attorneys and staff in a more in-depth manner. That should include observations of the attorneys in court, obtaining feedback from others in the criminal legal system, including the judges and opposing counsel, and reviewing the attorneys' written work. DPD should also obtain input from clients and determine how best to utilize that information in ensuring quality representation. (Renewing 2017 PDAB Recommendation #7).

Board Comment: DPD now collects data on various aspects of an attorney's work, including: trial rates, disposition of trials, plea rates and dispositions, investigator involvement, mitigation specialist involvement and average hours per case. This data is not intended as a measure of an attorney's work. It is intended as a tool for both the attorney and the supervisor.

DPD has also developed an evaluation process for all practice areas for both attorneys and staff. The evaluation process for the attorneys incorporates the data listed above. The evaluation requires the supervisor to consider the data and compare an attorney's individual data with the group data. The supervisor is also directed to discuss an attorney's placement within the group data and, if necessary, provide any explanation for why an attorney falls outside the group norms. The evaluation also directs a supervisor to observe each attorney in court and review an attorney's written materials.

4. The Department should complete training manuals and resources for all divisions, consistent with its strategic plan and the work completed in addressing Recommendation #3. (Renewing 2017 PDAB Recommendation #5).

Board Comment: DPD is working collaboratively with supervisors and line staff to develop practice manuals. DPD has also developed sample motions for regularly occurring issues, e.g., release motions and some ancillary issues, e.g., release of property. They have also developed some instructional materials for other issues, e.g., litigating mandatory Legal Financial Obligations.

DPD has also created an online library of training materials. Currently, the library includes trainings on family defense, civil commitments, collateral consequences, etc. The materials in the library consist of videos of some trainings, sample briefs and other instructional materials, e.g., PowerPoint slides.

5. The Department, after securing reliable data, should prepare a report on the various structural options raised in the King County Auditor's Report, which details the advantages and disadvantages of each option, including maintaining the current structure. The County should provide resources to the Department to engage in this critical work.

Board Comment: According to the King County Auditor's Follow-up Report, DPD has been working with the Office of Performance, Strategy and Budget (PSB) to determine what organizational structure is best suited for achieving the department's objectives without causing a major disruption to its practice. DPD should continue to collaborate with PSB to determine if changes to the organizational structure would allow DPD to more effectively achieve its strategic priorities.

6. The Executive and Council should, in consultation with the Board and the Department, examine whether the Board's enabling ordinance should be amended, given lessons learned from implementing the ordinance over the past four years.

Board Comment: The Board has begun drafting proposed amendments to the ordinance with hopes of forwarding them to the Executive and the Council in early 2020.

7. The Department should continue its engagement with all stakeholders in the development and implementation of alternative court processes that provide meaningful opportunities for clients to access needed services and minimize the impact of justice system involvement. The Department's considerable experience with alternative courts (e.g., Drug Court, Mental Health Court) should inform its ongoing activity in these still-developing justice models. With respect to existing or newly proposed options, the Department should work to ensure that such courts afford clients appropriate protections of their rights and meaningful opportunities for success. The Department must also ensure that these programs do not improperly widen the net, entangling people in the justice system when referral to needed social services would be a more appropriate and effective response.

Board Comment: DPD has been representing clients in community courts in Redmond and Burien where DPD clients accused of low-level misdemeanors have the opportunity to access services in lieu of a criminal conviction. While DPD continues to prefer programs such as LEAD, which emphasize investing in services before criminal charges are filed, the community courts in Redmond and Burien allow for clients who have already had charges filed against them avoid a conviction through participating in services that may address the underlying causes of their behavior.

8. The Department should develop a robust legislative advocacy program to promote criminal justice reform at each governmental level.

Board Comment: DPD participated with other stakeholders to advocate for bills in the 2019 Legislative Session, which included the passage of [SB 5290](#), which phases out the jailing of children for status offenses, such as running away from a foster care placement, disobeying parents, or not going to school; [SB 5288](#), which removes the crime of second-degree robbery from the state’s three-strikes conviction law; [HB 1041](#), which streamlines the process for restoring offenders’ civil rights after serving terms for felony convictions and expands the types of felonies that can be vacated; and [SB 5444](#), which creates a forensic navigator position to help Trueblood class members access outpatient restoration, expands criminal charges eligible for diversion to treatment instead of arrest, creates an option for outpatient competency restoration, and allows criminal courts to dismiss more misdemeanor cases instead of sending them to restoration.

In addition, as discussed previously, DPD participated in the rulemaking process to protect the rights of youth who are incarcerated and formerly in foster care and participated in improvements to local ordinance and executive policy regarding inquest proceedings.

PROGRESS IN ADDRESSING THE BOARD’S 2018 EQUITY AND SOCIAL JUSTICE RECOMMENDATIONS

1. **Addressing the Needs of People Struggling with Mental Illness:** The County must rethink and overhaul the way that the involuntary commitment process is utilized in order to meet the needs of King County residents who struggle with mental illness. The involuntary commitment process is an expensive and ineffective way to address the significant public mental health crisis the County and state faces. Effective mental health services must be made available to community members earlier and on a more consistent basis.

Board Comment: Again, little progress has been made in improving the conditions for individuals who struggle with mental illness. DPD joined Disability Rights Washington and others to successfully oppose state legislation that would have greatly expanded the Involuntary Treatment Act and would have resulted in increased involuntary hospitalization and forced medication with fewer due process protections. Such statewide efforts to reform the procedures for forced treatment, do nothing to address the lack of effective social services and housing for those who battle mental illness in King County.

The Director’s Office attends a King County Competency Continuum Workgroup which is coordinated by King County Behavioral Health and Recovery Division and the Washington State Office of Forensic Mental Health Services. The purpose of the workgroup is to address root causes and promote and expand diversion of individuals who cycle through the local criminal courts, but often wind up getting charges dismissed due to lack of legal competency under RCW 10.77 (incompetent to stand trial) or ordered for competency restoration if their charge is eligible.

Until housing is made available to those in need, and until high quality consistent mental health care is readily available to those who require it, we will continue to see those with mental illness entangled in the criminal and ITA systems. Upstream investments in housing and high-quality care are required.

2. **Pre-Trial Detention:** The County should work to reduce pre-trial detention through reforming bail practices and adequately resourcing alternatives to detention, such as work release. Individuals accused of misdemeanors who are not released on their own personal recognizance in District and Municipal Courts should be permitted to post unsecured bonds, which allows them to avoid the financial burden imposed by private bond companies. The Department should also advocate for funding effective pre-trial supervision programs that permit defendants to remain in the community pending trial.

Board Comment: The Director's Office drafted a model brief in support of pre-trial release or, in the alternative, unsecured bond and provided training to DPD attorneys on this critical issue. Nevertheless, the average daily population in the King County Jail remained about the same between 2018 and 2019, with a slight increase.¹⁰ A vast majority of the people held in jail have not been adjudicated. In February 2019, the Washington State Pre-trial Reform Task Force issued a [report](#), documenting King and other counties' high rates of pretrial incarceration and making several recommendations. King County also convened a workgroup on pre-trial reform, mandated by a proviso included in the county's 2019-20 budget King County. DPD participated in the workgroup, a report is forthcoming. Related to the issue of pre-trial detention, DPD implemented a text messaging reminder system for clients to reduce rates of failing to appear ("FTA"). DPD also worked closely with researchers from Stanford University and Notre Dame to issue 1,000 Orca Lift passes to incarcerated clients about to be released. The pilot project is a partnership between the researchers and Metro, which furnished the pre-loaded cards to determine whether providing transportation benefits will reduce failure to appear rates. This project was launched in Seattle Municipal Court and will be expanded to Kent District Court.

3. **Increased Diversion Alternatives and Restorative Justice Opportunities for Adults:** Much effort is being expended to divert youth from the juvenile justice system and provide restorative alternatives. Similar efforts must be made in the adult criminal justice system where young adults, 18 and older, are also in need of more effective interventions.

Board Comment: Progress is being made to increase diversion opportunities in Seattle and King County. The DPD Director's Office continues to proactively seek collaborative opportunities to increase pre-trial diversion for DPD clients.

The Seattle City Attorney's Office (SCAO), in collaboration with other stakeholders, created a program to divert certain eligible misdemeanor cases for young adults to Choose 180, a community-based nonprofit organization that offers workshops to empower young people to make positive changes in their lives. DPD successfully

¹⁰ [King County of Department Adult and Juvenile Detention, Detention and Alternatives Report, November 2019.](#)

advocated for diversion post-filing, where the individual was eligible but unable to complete a pre-filing workshop. To that end, the Director's Office also set up a training for Choose 180 and the SCAO to educate our staff about the diversion opportunity and the Choose 180 program.

In addition, DPD worked with SCAO to divert more individuals with behavioral health disorders to the King County Legal Intervention and Network of Care (LINC) Program. DPD advocated for KCPAO and SCAO to not bar people from the diversion opportunity due to their criminal history. This proposal is under consideration.

DPD has also supported KCPAO's efforts to implement the Community Justice Alternative (CJA) for young adults, which would provide a post-filing resolution alternative for young people 18-24 charged with certain eligible felonies.

Finally, DPD is working with other stakeholders on setting up a Community Court in Seattle Municipal Court (SMC). Through thoughtful negotiations between stakeholders, the new SMC Community Court is expected to launch around June 2020 and will provide certain individuals charged with misdemeanors the opportunity to have their cases dismissed after being connected to long-term services. Significantly, they will be able to do so without giving up their right to a trial.

- 4. Report on how trauma informed practices will be incorporated in the design and use of the new youth jail:** The County has taken an ambitious and progressive approach in its [Roadmap to Zero Youth Detention](#), calling on all decision-makers to publicly adopt a public health approach. A public health approach includes trauma informed principles. There is no publicly available information on how the new youth jail will be trauma informed in its design or in its use. Given the concerns raised about building the new youth jail by many community members and community-based organizations, the County should be transparent and report to the public about how it is designing the building to meet the needs of children it will detain in a trauma informed manner.

Board Comment: The opening of the new Judge Patricia H. Clark Children and Family Justice Center, which includes 112 detention beds, is imminent. In 2019, the average daily population of the current youth jail fell to just 42 young people, down almost 500% from the 1990's when the existing youth jail was built. Still, 85% of the children in detention are youth of color, with Black youth making up more than half of the detention population.¹¹ With the opening of the new facility scheduled for early 2020, the Board will be watching to see if the County lives up to its promise of a therapeutic, trauma-informed facility. The County's "Zero Youth Detention Implementation Dashboard," which tracks the County's progress on implementing its Roadmap to Zero Youth Detention, does indicate that 13 detention staff were trained in "Think Trauma" through the second quarter of 2019.

¹¹ This data is from the King County Zero Youth Detention Data Dashboard accessible [here](#).

DPD has actively pursued policies that would reduce trauma to their detained youth clients. DPD has proposed policy changes to the Department of Adult and Juvenile Detention (DAJD) on strip searches and family visitation. Strip searches can cause youth to experience anxiety and depression and can be re-traumatizing for those who have survived sexual abuse.¹² DPD has requested that DAJD limit the use of invasive strip searches on youth to instances where there is a reasonable suspicion of contraband. DPD has also requested that DAJD expand its visitation policy beyond the current policy which restricts visitation to three 30-minute visits per week with parents, guardians and siblings under 8 years old. DPD has requested longer and more frequent visits, as well expanding eligible visitors to include aunts, uncles, siblings and supportive community members such as teachers and mentors.

2019 RECOMMENDATIONS

1. **Staffing Model.** The current staffing model based on caseloads and supplemental credits should be re-evaluated. As recommended in the Board’s 2019 Budget Report, the County should follow the lead of other jurisdictions and conduct a Delphi study. The Delphi approach to estimating the amount of resources needed for a future project was initially designed by the RAND Corporation for the U.S. military and has proven highly reliable compared to other methods in a wide variety of applications. The Delphi studies of public defense provide resource/time expectations based on case type, so caseloads are not, as they currently are in King County, determined by the actual time worked by a specific attorney on a specific case. Weighting case type rather than measuring hours worked provides much more consistency and predictability in assessing staffing needs.¹³
2. **Investigative resources.** The staffing ratio of 1:4 for investigators to attorneys is insufficient. Criminal cases now routinely contain hours of video or audio recordings, all of which must be reviewed to properly prepare the case. The lack of a sufficient number of staff investigators delays resolution of cases and frequently requires clients to remain in custody for longer periods of time.
3. **Supervisors and caseload.** The County should fund the Department for a staffing model that does not require attorney supervisors to carry a caseload while supervising more than 6 attorneys. Creating sufficient supervision time is essential to guarantee high-quality representation. Increased supervision should also benefit case processing times by improving early case planning.
4. **Mitigation specialists/holistic defense.** The County should support the Department’s efforts to increase the role and number of social workers as mitigation specialists. These efforts should look to the “Holistic Defense” model, with social

¹² An estimated 75-93% of youth who enter the legal system have experienced trauma. An estimated one-third of girls in the juvenile justice system have survived sexual trauma. Justice Policy Institute, *Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense*, (2010).

¹³ For a description of the Delphi model and its application to a public defense system see [The Colorado Project: A Study of the Colorado Public Defender System and Attorney Workload Standards](#), conducted by Rubin Brown and The ABA’s Standing Committee on Legal Aid and Indigent Defendants, August 2017 (last accessed December 2, 2019). Other jurisdictions that have undertaken such studies include Louisiana, Michigan, Missouri, Rhode Island, Tennessee, and Texas, among others.

workers and other non-lawyer advocates working as a team to represent each client. The Harvard Law Review recently published a rigorous, large-scale randomized comparison of results between the holistic defense model and a more traditional public defense model. The findings are striking: while holistic defense does not reduce the likelihood of conviction, it reduces the likelihood of a custodial sentence by 16% and reduces expected sentence length by 24%. Over a ten-year period, the holistic model saved its clients 1.1 million days of incarceration, with no negative impacts on recidivism.¹⁴

5. **PDAB staffing:** In order for PDAB to meaningfully report on the “state of public defense,” it must engage with clients and community partners regarding their experience working with DPD and PDAB. This requires additional staffing that should be funded by the County.
6. **Engaging in policy advocacy.** The Advisory Board supports DPD’s stronger voice as it engages in policy advocacy. DPD policy advocacy concerns issues of the utmost importance to the preservation of the accused’s constitutional rights and civil liberties and the community’s well-being.

2019 EQUITY AND SOCIAL JUSTICE RECOMMENDATIONS

1. **Racial disparity and pretrial release.** November 2019 data shows that the average daily population of the King County Jail was 36.7% African-American, a number that has held steady as far back as that data is available. This compares to an approximately 6% African-American population in King County. Clearly, King County has work to do to on racial disparities in criminal justice. Disparities in pretrial detention have very significant downstream consequences, such as the loss of employment, housing, and custody of children. Defendants detained in jail while awaiting trial also plead guilty more often, are convicted more often, are sentenced to prison more often, and receive harsher sentences than similarly situated defendants who are released during the pretrial period. Bold changes to reduce pretrial detention have been undertaken by jurisdictions that encompass large urban populations similar to those in King County and have shown that broad changes to pretrial release can dramatically reduce jail populations and racial disparities without threatening public safety or court functioning. The County should thoroughly re-examine pretrial detention practices to begin correcting these racial disparities and reducing the use of pretrial detention. In addition, criminal legal system stakeholders should move forward with implementing current promising proposals such as the KCPAO Community Justice Alternative and the SMC Community Court.
2. **Racial disparity and detained youth.** The average daily population of the King County Juvenile Detention facility during 2019 included 85% youth of color, almost 50% were African American. As the number of detained youths has decreased, the racial disparities have grown. The [King County Zero Youth Detention Initiative](#) leads with this issue and has begun to implement strategies, such as Credible Messengers and C.E.D.A.R. (Community Empowered Disposition Alternative Resolution). These

¹⁴ James Anderson, Maya Buenaventura, and Paul Heaton, [The Effects of Holistic Defense on Criminal Justice Outcomes](#), 132 *Harvard L. Rev.* 819 (2019).

efforts are commendable; however, it is critical that DPD, the County and the broader community “double down” on efforts to address this crisis and hold ourselves accountable as a society to reducing disparities for children in our community.

3. **Outcomes for foster youth.** When the foster care system fails, many of these children can end up in the prison system. This is sometimes referred to as the “foster care to prison pipeline.” Increased efforts should be made to push back against this “pipeline” including, but not limited to: decreasing the number of children in foster care by providing basic services for families, removing child support obligations for families whose children are in foster care, increase judicial oversight of children who are moved between different foster homes and tracking the number of people in prison who spent time in foster care.
4. **Remove financial barriers to re-entry.** Although the legislature has made some efforts to address the significant monetary debt that people carry following a criminal conviction by creating processes for reducing or eliminating interest on non-discretionary legal financial obligations, more must be done. Mandatory penalties, such as the \$500 victim penalty assessment that is attached to every felony conviction, keeps thousands of King County residents who have been crime-free for years from being able to vacate their convictions and obtain increase their employment and housing options. County officials should advocate in the Washington legislature to remove these barriers, which disproportionately impact people of color.
5. **Develop guidelines for implementing the behavioral health disorder diversion option under RCW 10.31.110(3).** Last year the Washington legislature passed a new law which allows law enforcement to refer certain individuals to mental health treatment rather than making an arrest. The statute requires that guidelines be developed by local law enforcement together with the prosecutor, in consultation with the defense and disability community. To date, the Board is not aware of any efforts to implement this new law. King County should lead in developing alternatives to arrest and prosecution for individuals struggling with behavioral health disorders.