

**Budget Report of the
King County
Public Defense Advisory Board**

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King County Public Defense Advisory Board

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INTRODUCTION

This report is prepared in accordance with King County Code, section 2.60.031(I), which requires the Public Defense Advisory Board (“the Board”) to prepare a report regarding the Executive’s proposed budget for public defense.

The Board has consistently noted in previous reports that an adequately funded public defense system is an issue of equity and social justice. By definition, the clients the Department of Public Defense (“DPD” or “the Department”) represent are indigent and many are people of color. The clients are frequently mired in poverty and do not have consistent access to services which could help them and possibly break the cycle of poverty. DPD’s clients are the individuals who could most benefit from the County’s focus on equity and social justice. In some ways, the DPD budget can serve as a test of the County’s commitment to equity and social justice.

THE PANDEMIC’S IMPACT

King County DPD’s struggle to fill vacant attorney positions represents a national and statewide trend.¹ The factors contributing to this are difficult caseloads, inadequate compensation, the loss of experienced attorneys to retirement, and the lack of the requisite number of law students drawn to public defense. Due to the systemic nature of these factors, this problem will likely not resolve itself in the near future. As such, identifying and funding alternatives necessary to ease the high workloads is critical to ensuring the effective representation of DPD’s clients.

MITIGATION AND SOCIAL SERVICE SUPPORT

DPD in their proposed budget, seeks funding to hire mitigation specialists. DPD is also seeking to add mitigation specialists to the staffing model. The staffing model is discussed briefly below. Currently, there is no provision, and therefore no funding, for mitigation specialists in the staffing model. Despite this, DPD has some mitigation specialists on staff, though only because DPD has repurposed FTEs for other support services, e.g., investigators.

The Washington State Bar Association (WSBA) Indigent Defense Standards mandate the use of mitigation specialists² and social service specialists in public defense practice. Standard Seven, paragraph 2, states, “Social work staff should be available to assist in developing release, treatment, and dispositional alternatives.” Specifically, the judges in King County are requesting release plans from defense at all stages of the case. This includes first appearance, arraignment, bond hearings, negotiations, and sentencings.

¹ https://www.yakimaherald.com/news/local/crime_and_courts/attorney-shortage-caseloads-leading-to-shortage-of-court-appointed-attorneys/article_6b0de8da-45a3-11ed-b6f3-13fc5440ad5e.html; <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/06/21/public-defenders-were-scarce-before-covid-its-much-worse-now>; <https://www.wpr.org/class-action-lawsuit-calls-out-lack-state-public-defenders>

² Prior to the creation of DPD, the individual agencies frequently employed social workers, i.e., individuals with an MSW, who assisted the attorneys with various aspects of their cases. When DPD was created, the County adopted the job classification of ‘Mitigation Specialist’, to include both social workers and non-social workers, whose work focused on assisting both the attorney and the client with finding and providing social services.

The scope of the work of the mitigation specialists includes the services listed in the WSBA Standards and, at times, exceeds them. The Standards were last revised 11 years ago, and the work of the mitigation specialists has evolved since then. Mitigation specialists frequently meet with clients, at the attorney's direction, to obtain information about the client and the client's social, medical, and familial background and the circumstances that led to the client's current charges. The mitigation specialists triage and evaluate clients' mental health, to help inform the attorney of the need for other experts. This information, combined with reports from experts, such as forensic neuropsychologists, psychologists, psychiatrists, etc., is used to generate reports that are presented by attorneys to prosecutors and judges to support release/bail motions, negotiations, and sentencing.

The mitigation specialists obtain not only information regarding the client's background and circumstances, they also develop information regarding substance abuse and mental health issues. They will also seek, to the extent DPD's extremely limited mitigation specialist resources allow, to connect the client with social services that can include housing, substance abuse or mental health treatment, and help to establish either a treatment plan for the client or a release plan, often requested by the court.

Cost savings: Meet the client where they are at individually

The work of a mitigation specialist provides benefits not only to the client but to the criminal legal system as a whole. Mitigation specialist services provide increased public safety and cost savings to all parties involved in the criminal legal system.³ Release plans inform judges' decision-making on whether to release on personal recognizance or with conditions. This enables clients to continue working, attend school, provide childcare for their family, maintain housing, seek treatment or counseling, amongst other essential daily activities.

Release plans are also individualized to meet the client's current needs and to build longer term solutions, so the client can be successful after the resolution of their case. This is particularly important for clients from marginalized communities.

Public safety and recidivism: Post-pandemic

It can feel overwhelming to the community at large to regularly read about crime and violence in their neighborhood, as well as witness it. It is also overwhelming for the communities where these clients come from, to be constantly struggling with poverty, discrimination, homelessness, and violence.

On October 6, 2022, the Centers for Disease Control (CDC) reported homicides and suicides involving firearms, which soared in 2020, the first year of the pandemic, continued rising in 2021.⁴ The significant spike in gun purchases during the pandemic, along with the disruptive aspects of the pandemic, may have contributed to the increased violence. Thomas Simon, the

³ See DPD's [2023-24 Agency Proposed Budget](#) submitted to Executive Dow Constantine on July 1, 2022.

⁴ See <https://www.nytimes.com/2022/10/06/health/guns-homicides-suicides-cdc.html>

CDC lead researcher of this report, shared what he saw as the contributing factors to continuing rise of gun-related deaths.

There have been changes in disruptions in services, in education, increased mental stress and isolation, and economic stressors all related to COVID. We also had concerns in a lot of communities about law enforcement's use of lethal force, and the tension and distrust of law enforcement. Gun deaths rose among both men and women in 2021. Young adults ages 25 to 44 were the most likely to be killed with a firearm. And while there were increases in gun homicides among all racial and ethnic groups last year, the rise was primarily concentrated in Black and Latino communities. The racial disparity is particularly acute among youngsters and young adults ages 10 to 24. Overall, Black and Latino Americans were 13.7 and 2.4 times, respectively, as likely to die in a gun homicide, as white people in 2021 – the largest such difference in over a decade according to a Johns Hopkins analysis. And, Black and Latino Americans accounted for the greatest increases in gun suicide rate among adults under 45 years of age.⁵

The increase in gun deaths, especially among young people from Black and Latino communities, is a public health epidemic that the criminal legal system is increasingly expected to address. The causes of these tragic incidents are varied but frequently substance abuse or mental health issues play role. Many criminal cases could be avoided if a mitigation specialist or social services provider was able to intervene when an at-risk individual first enters the system by providing a connection to services that, unlike the carousel system, reduce criminal legal system involvement.

Additionally, it is important to note that this request for funding for mitigation specialists is in line with the County's Equity Budget Guidelines. The Guidelines encourage budget requests that focus on the four equity actions, including **"Replace it with something better."** Guidance on 2023-2024 Budget Investments – ESJ Criteria, page 1 (emphasis in original). Two of the categories into which proposals should fit are:

1. Investments that undo (or address) the negative effects caused by historic and ongoing racism; and
2. Investments that are designed to maximize benefits in communities where needs are greatest or where there have historically been service and/or investment gaps.⁶

The DPD budget proposal for mitigation specialists fits squarely in those categories. Mitigation specialists are "something better." They provide additional value to the services DPD provides. The services a mitigation specialist provides also address the negative effects of long-term racism in the justice system by providing the client with a voice to describe their circumstances. The services of a mitigation specialist also benefit directly the communities where the needs

⁵ See <https://www.nytimes.com/2022/10/06/health/guns-homicides-suicides-cdc.html>

⁶ See [Guidance on 2023-2024 Budget Investments – ESJ Criteria](#), page 2.

are the greatest. That is even more true when you consider the potential reduction in recidivism that additional mitigation specialists could provide.

Use of social service specialists in other areas of public defense.

Public defense as a whole has increasingly relied upon the support of mitigation specialists, social workers, and social service specialists. In recent years, the Washington State Office of Public Defense (State OPD) has seen a sharp rise in requests from public defender offices across the state for grant funding to be used for social service providers in the criminal practice.⁷ This applies across the board, including district, municipal, and superior court cases.

Public defense agencies and individuals who litigate child welfare dependency cases and 71.09 civil commitment all count on mitigation specialists and social service providers to directly assist their legal team. This includes developing a trustworthy relationship with the client and their families, drafting social histories, accessing health and human services, securing appropriate housing, employment, and schooling. These services all contribute to the success of the client during the legal process and after its conclusion.

In 2022, the state legislature significantly raised the contract vendor amount for social service providers who contract with State OPD, reflecting the value of their role and the work they accomplish.⁸

CITY OF SEATTLE FOUR-YEAR BUDGET (2023-2027)

In September 2022, King County DPD and the City of Seattle reached an agreed four-year budget to provide public defense representation at Seattle Municipal Court.

The 2023-2027 budget increased the number of mitigation specialists and decreased the maximum allowable from 400 to 325 cases per year. The changes in the budget reflect the increasing complexity of cases and the critical need for social services to support the client. DPD based its caseload reduction request on emerging research that the felony and misdemeanor caseloads are too high. In fact, next year, the American Bar Association (ABA) plans to review states' public defense caseload standards in preparation for what may be an adjustment downwards.

The City's budget also showed both insight and foresight. It not only increased the number of caseload-carrying FTEs from 21.33 to 27.59, but just as importantly the City recognized the value of mitigation specialists and increased the number of funded mitigation specialist positions from four to seven full-time positions. Paralegals and legal assistants were also increased from five to seven FTEs.

STAFFING MODEL

In previous reports the Board has discussed the staffing model. The staffing model is intended to predict the number of cases in the upcoming years. The number of cases will, under the

⁷ See [CH. 10.101.060 RCW Indigent Defense Services](#)

⁸ See [2022 Washington State Operating Budget](#). The 2022 state operating budget included a 16% increase for social service providers who contract with State OPD.

staffing model, determine the number of attorneys needed to handle those cases. The number of attorneys further dictates the number of other staffing needed, e.g., investigators, support staff, etc. The staffing model relies on previous years and various trends to predict the cases for the upcoming years. However, both DPD and PSB concluded that the data from the past couple of COVID years did not produce reliable data on which to predict the number of future cases. As a result, other than DPD's proposal to include mitigation specialist in the model, neither DPD nor PSB is seeking to modify the staffing model this year.