

# Major Public Defense Changes Postponed

By Robert C. Boruchowitz

A last-minute agreement in the King County Council budget process in November forestalled a major budget cut to the Department of Public Defense that would have slashed 40 positions of the defenders' staff and affected the representation of many of the 19,000 cases the DPD handles per year.

The agreement, crafted by Councilmembers Larry Gossett and Rod Dembowski, with Executive Budget Director Dwight Dively, provided for formation of a work group to consider DPD's staffing needs, caseload levels, transition plans, and the impact that budget changes could have on the clients and the quality of public defense. It also provided that no existing DPD employees could be laid off until the earlier of April 1 or the date the work group report is filed.

Work group members include former King County judges Sharon Armstrong and Jim Doerty, outgoing interim DPD Director Dave Chapman, his deputy Lisa Daugaard, veteran defender Dave Roberson, and law and justice policy advisor Gail Stone,

The agreement followed a flurry of meetings with members of the newly formed Public Defense Advisory Board and public hearings that included passionate presentations by board members and defender staff. There was some media attention including an article in *The Stranger* entitled "King County's Proposed Cuts to Department of Public Defense Threaten a Crucial Safety Net."

The Advisory Board had submitted a report to the Council and King County Executive Dow Constantine that urged that there be no major changes in public defense or its budget for at least 12 months. The all-volunteer Board first met August 12, 2014, and worked feverishly to produce its report by October 31.

The Board noted, "King County has long been recognized as having one of the finest public defense systems in the United States." Responding to

Constantine's proposed cut and plans to reduce the four defender divisions to three, the Board added:

Maintaining this quality in the face of budgetary challenges and a major government restructuring requires careful analysis, evidence-based decision making and the vision to identify where benefits from investments in efficiencies will exceed savings from short-term budget cutting.

The Board emphasized: "King County will be best served in the courtroom and on the balance sheet by a cautious approach that substantially maintains the current budget during the initial 12 months of the biennium and then makes targeted changes, including cuts, where efficiencies can be identified with the benefit of information obtained from experience and the new case management system."

The Board added that the proposed cuts "would damage King County's ability to provide public defense services at current levels and could threaten the County's ability to meet constitutional and other legal requirements discussed in this report."

The Board, chaired by Perkins Coie partner Marc Boman, urged that any significant budget cut should be "data driven and follow, not precede, analysis of information that will be obtained from the new case management system - information that is not yet available." It added that staffing decisions should be "based on building an adequately-sized team of career service attorneys and professional support staff, rather than on the need to meet exigencies during the transition from a contract to an in-house public defense model."

Addressing Constantine's proposal to eliminate deputy director positions in the divisions as well as supervisors of non-attorney staff, the Board emphasized "the need to retain personnel, most notably Assistant Division Directors and Administrative Unit Supervisors, whose current titles inadequately describe the critical services they provide and without whom the Department's work could not adequately be performed."

The Board's Budget Report Committee included Boman, Judge Armstrong, retired Federal Defender Tom Hillier, and Sophia Byrd McSherry, deputy director of the state Office of Public Defense. The report followed meetings with DPD staff, the presiding judges, King County Prosecuting Attorney Dan Satterberg, Constantine, Dively and the County Council Budget Leadership Team and staff. The Board also considered correspondence from various stakeholders including defenders.

The Board's first annual report is likely to be submitted this month, addressing issues relating to the state of public defense, including training, staff development and technology.

Prior to the creation of the DPD, public defense in King County was provided primarily by nonprofit defender organizations since The Defender Association began contracting with the County in 1970. Three other organizations - Associated Counsel for the Accused, Northwest Defender Association, and Society of Counsel Representing Accused Persons - were in place as well in March 2013 when the County settled a class action lawsuit, *Dolan v. King County*, which resulted in the nonprofit defenders becoming eligible for retirement benefits under the Public Employees Retirement System program.

The Washington Supreme Court had held that "the employees of the defender organizations are employees of the county for the purposes of PERS." The County decided to move its public defense program "in-house" and by last July had established four divisions of the DPD based on the four nonprofit offices.

The implications of the settlement are up in the air as a result of a decision by the Court of Appeals in November that because the Department of Retirement Services was not a party to the agreement between the class and King County, DRS cannot be bound by its terms. The Court remanded the matter to Superior Court.

The Supreme Court in *Dolan* described King County's public defense system as "in many ways, a model system providing quality representation to the poor." In addition to national recognition for the client-centered work and innovation of the nonprofit offices, individual alumni of the four offices have become judges, elected officials, law professors in schools around the country, and leaders in the private bar. Two Washington Supreme Court justices, one Court of Appeals judge and a federal district court magistrate are former King County defenders.

The Seattle Times in an editorial praised the agreement and described the proposed cuts as "a shortsighted budget decision:"

Instead of keeping the staffing levels the same - and bumping up public defense spending to accommodate them - the county prepared a budget that required the same amount of work, but with 40 fewer attorneys and support staff....

Public defense is a vital, if not always convenient, element of a free and fair society. The county must ensure it has the right resources to do the work.

In December, Constantine appointed Lorinda Youngcourt to be the first chief public defender under the newly organized department. This was contemplated by a change in the King County charter.

Youngcourt has been the chief public defender for the past four years in Lawrence County in Bedford, Indiana, where, according to the DPD press release, "she created a new office of indigent defense services to replace an antiquated system where underpaid private attorneys were hired and fired by local judges."

Youngcourt graduated from Indiana University School of Law in 1988 and worked for four years for the Indiana State Public Defender doing capital post-conviction work. After five years in private practice, she worked for the Marion County, Indiana, felony division for five years and returned to private practice until she began the Lawrence County defender office. She will assume her King County post on January 20.

Youngcourt succeeds Chapman, who did not seek the permanent position. "Dave's vision, steady leadership, and skillful management helped us all make the transition to this new model for delivering services to the public," Constantine said. "Dave set a strong foundation for the future of public defense in King County. He leaves a lasting legacy, and he has my eternal gratitude."

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