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King County Public Defense Study

Final Report

12 June 2000

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The directors of each non-profit public defender agency: Bob Boruchowitz, The Defender Association; David Chapman, Associated Counsel for the Accused; Anne Daly, Society of Counsel Representing Accused Persons; Rufus McKee, Northwest Defender Association; and the staff of each of these agencies, whose cooperation was central to the success of this study;

Barbara Gletne, Director of the Office of Community and Human Services;

The Metropolitan King County Council, including Council Members Greg Nickels and Larry Gossett, and particularly Clifton Curry, its Senior Legislative Analyst;

The King County Executive Office, including Deputy Executive Paul Tanaka and especially Steve Nolan, Criminal Justice Senior Policy Advisor;

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The King County Prosecuting Attorney's Office, in particular Norm Maleng, the King County Prosecuting Attorney; the Honorable Mary Yu, formerly Deputy County Prosecuting Attorney; and Daniel T. Satterberg, the Chief of Staff;

Mark Sidran, Seattle City Attorney and his Criminal Division Chief, Bob Hood;

Jim Harms and Terri Hansen of the King County Jail; and

Jan Michaels, Executive Director of the Washington State Bar Association.

Executive Summary

Background

King County convened a Public Defense Study Oversight Committee (“the Oversight Committee”) in September 1999. The Oversight Committee members represent many elements of the King County and the City of Seattle criminal justice systems and governments.

In conjunction with the Budget Office, the Oversight Committee developed a request for proposal to conduct a “Public Defense Study.” The Request for Proposal, issued in November 1999, notes a “general satisfaction with the existing public defense system,” but also points to several “perceived problems,” including:

- A lack of coordination with other criminal justice agencies;
- A lack of outcome and performance measures to determine the effectiveness and satisfaction levels with the services being provided;
- A lack of parity with County departments with regards to compensation of staff and technology; and
- A lack of a strong policy voice to represent the views of the public defense function.

The Request for Proposal called for a consultant to: analyze the existing public defense system in terms of quality and efficiency; report on alternative models for providing defense services in other areas around the country; compare the alternative models with the King County system; engage in a system-wide discussion to assess the

benefits and feasibility of changing to another system; and work with the Oversight Committee to prepare a report with findings and recommendations for improving the current system.

Ultimately, the Oversight Committee selected The Spangenberg Group as the consultant for the study. The Spangenberg Group is recognized nationally as one of the nation's foremost experts in evaluating criminal justice systems, specializing in the public defense function. The Spangenberg Group has conducted two prior studies of the public defense system in King County, as well as studies in Pierce County and Vancouver, Washington, and studies of the overall public defense system in the State of Washington. The Spangenberg Group was assisted in this study by Peter Moy & Associates of Seattle, Washington, who prepared the financial cost projections.

Mr. Robert L. Spangenberg, the president of the Spangenberg Group, as well as other staff members and several outstanding public defenders from across the country made numerous trips to King County from January to May 2000. Members of The Spangenberg site teams spent more than sixty days in King County, interviewing county officials, leaders of various criminal justice agencies and each of the non-profit, public defense agencies that make up the public defender system. They also made court observations and met many times with the Oversight Committee members individually and as a group. In March 2000, the Spangenberg Group presented the Oversight Committee with a preliminary report, which outlined several issues for discussion and consideration by the committee. In several extended meetings that followed, the Oversight Committee considered and discussed each issue and arrived at a consensus on all of the findings and recommendations contained in this report.

The King County Public Defense System

The King County Public Defense system is unique among all major urban counties in the United States. King County provides funds for indigent defense through its own Office of Public Defense (OPD), which is a division within the Department of Community and Human Services. The Office of Public Defense is responsible for screening persons to determine whether they are financially eligible for public defense services, assigning cases to attorneys (either public defenders or private counsel), and negotiating and administering contracts with the four private, non-profit public defender agencies. The Office of Public Defense does not provide any direct representation to persons charged with criminal offenses, but is responsible for managing the funds for indigent defense provided by King County and the City of Seattle. In FY 2000, the Office of Public Defense's total adopted budget is \$27,900,912, of which about \$5.4 million is contributed by the City of Seattle. Approximately \$22.8 million of that will go to agency contracts; about \$2 million goes for private appointed counsel; \$1.1 million for expert services; and \$1.2 million for administration. Data from the OPD indicates that there were approximately 57,000 cases handled by King County's public defense system in FY 1999.

After five months of intensive study, The Spangenberg Group reported and the Oversight Committee agreed that the overall public defense system in King County provides quality representation to its clients. King County should be commended for its support of the system for almost thirty years. Notwithstanding this finding, however, the Spangenberg Group and the Oversight Committee verified the significance of the issues raised in the RFP and highlighted a number of improvements that could lead to better

representation, better cooperation among all of the criminal justice agencies and several potential opportunities for the county to save money while improving the overall system.

Recommendations

The Oversight Committee makes the following recommendations for improvement in the King County public defense system:

- The Office of Public Defense should be elevated to a county department level within the Executive Branch of county government. Two of the primary reasons for this decision are the need for a stronger policy voice on behalf of public defense and greater oversight of the entire program. Along with the stronger voice, the Oversight Committee recommends that the Office of Public Defense have additional duties not presently carried out by the Office of Public Defense. Also, the Office of Public Defense should be administered by an attorney who has prior experience in the criminal justice system and who should be selected with the assistance of an oversight commission. In the interim, the public defender system should develop a new method of providing a stronger policy voice on behalf of the public defender system in King County, with the cooperation of the county and the entire criminal justice system.
- The County should develop a comprehensive case-weighting system that supports innovation and improvement in the public defender system. This system should include the prosecution function and the courts. It is not the caseload standards that should be studied or modified, but rather the methodology used to determine the average amount of time needed to perform necessary functions for

various types of cases. The current case credit system used in the public defense system does not reflect accurately the average time needed to perform necessary functions in various types of cases. This recommendation is a high priority and should be completed in time to address budget considerations for FY 2002.

- King County should develop procedures that give attorneys and the court sufficient time and resources to ensure that the early hearings in a case are more meaningful, especially with respect to pretrial release and earlier dispositions of cases. Similar changes have already been implemented in the Superior Court “Fast-Track” Drug Program.
- The King County Office of Public Defense should develop a centralized case management system (CMS), accessible by each of the agencies. This would reduce the need for repetitive data entry at each of the defender agencies, would ensure more consistency in information collecting and reporting capabilities, and reduce costs. Each agency should have its own CMS that is capable of tracking case information beyond the assignment of the case, which would allow the agencies to analyze workload and disposition information, avoid scheduling conflicts and identify systemic bottlenecks that slow the administration of justice in King County.
- There should be more communication, coordination and contact among the public defense agencies in King County. Some suggestions include joint training, interagency committees in areas such as social work, investigation and BECCA. Coordination and communication should exist below the director level, periodically, and include members of the boards of directors of the four agencies, the deputy directors, case supervisors, etc. This should lead to a stronger, more forceful public

defender community and an opportunity for the sharing of unique ideas and new ways of providing services among employees of the various agencies.

The Oversight Committee is committed to working with King County, its criminal justice agencies, the Office of Public Defense, and the public defense agencies through the next few months to implement these recommendations. In particular, the Oversight Committee intends to focus on several tasks, including:

- developing a comprehensive, written policy concerning conflicts of interest in public defense cases;
- establishing policies that ensure that early hearings in a case are more meaningful, and particularly that the attorneys and the court have more information and an expectation of an outcome that will advance the case;
- reviewing the standards for determining eligibility for public defense services;
- implementing low cost improvements to existing technology that will lead to cost savings and improved efficiency.

Introduction

Preface by the Consultant

Over the past 20 years, members of The Spangenberg Group have had many contacts with the public defense system in King County, Washington. In addition to work in King County itself, The Spangenberg Group has conducted public defense studies in Pierce County and Vancouver, Washington, as well as studies of the overall public defense system in the State of Washington. During all this time (and including the present study), The Spangenberg Group has been impressed with the quality of the criminal justice system in King County. It is a positive reflection of the leadership within King County government and the various components of the criminal justice system, including the public defender agencies themselves. Public defense services in King County are considered among the best of the major urban counties across the country. The Spangenberg Group can affirm this judgment again after spending many days in King County over the past several months.

At the outset, The Spangenberg Group would like to emphasize that the success of King County's public defense system has been realized with very little financial assistance from state government. In recent years, most states have assumed much, if not all, of the financial responsibility for primary public defense services. For example, all of the following western states provide complete state funding for court-appointed cases: Alaska, Colorado, Hawaii, New Mexico, Oregon and Wyoming. When financial responsibility is left to individual counties, as it is in the State of Washington, each new state criminal law that increases the need for public defense services without increasing funding is likely to create a non-funded mandate. The sum total of these mandates seems

to increase frequently. King County is to be commended for meeting this growing challenge year after year without sacrificing the quality of its public defense services.

Having said that, The Spangenberg Group finds that the specific issues we have been asked to address are real and substantial. The unique system for public defense in King County has existed for over thirty years and has grown haphazardly. There are a number of issues within the system that need to be modified, reviewed or changed. Some changes would not only improve the quality of public defense services, but also save the taxpayers' money and improve the performance of the criminal justice system as a whole.

Some of the problems are systemic, however, and cannot be solved by the public defenders alone. Lasting improvements require all the criminal justice agencies to work together. The Spangenberg Group's approach to this study has *not* been simply to place a microscope over the Office of Public Defense or the four non-profit public defense agencies. Rather, we have approached this study with a view towards assessing the public defense function within the context of the entire criminal justice system and suggesting ways that the entire system might be more efficient while continuing to meet the high standards of quality expected by King County citizens.

The Request for Proposal

King County convened a Public Defense Study Oversight Committee ("the Oversight Committee") in September 1999. The Oversight Committee members represent many elements of the King County and the City of Seattle's criminal justice systems and governments. The Hon. Michael Spearman is the chairperson of the committee, and the lead staff is Beth Goldberg of the King County Budget Office.

In conjunction with the Budget Office, the Oversight Committee developed a request for proposal to conduct a “Public Defense Study.”¹ The Request for Proposal, issued in November 1999, notes a “general satisfaction with the existing public defense system,” but also points to several “perceived problems,” including:

- A lack of coordination with other criminal justice agencies;
- A lack of outcome and performance measures to determine the effectiveness and satisfaction levels with the services being provided;
- A lack of parity with County departments with regards to compensation of staff and technology; and
- A lack of a strong policy voice to represent the views of the public defense function.²

Ultimately, the Oversight Committee selected The Spangenberg Group as the consultant for the study. The Spangenberg Group contracted with Peter Moy & Associates of Seattle, Washington to prepare financial cost projections. Together, they began work on January 3, 2000.

Description of Study Methodology

Initial Site Visit

The Spangenberg Group began the project with a three-day site visit (from January 10-12, 2000) by Mr. Robert Spangenberg and Mr. William King. During this initial visit,

¹ Request for Proposal, *Public Defense Study Consultant, King County Office Of Budget*, proposal no. 147-99KJF (November 4, 1999) (hereinafter, “the Request for Proposal” or the “RFP”).

² RFP, at page 5.

Mr. Spangenberg and Mr. King worked with Mr. Moy and the Public Defense Study Oversight Committee to finalize the scope of the project. They met with Mr. Crane and the directors of each agency, both as a group and individually (except for Mr. McKee, who was unavailable for an individual meeting during this visit). They also met individually with Mr. Clifton Curry, Legislative Analyst for the King County Council, Ms. Pat Steel, Director of the Budget Office, and Ms. Barbara Gletne, Director of the Department of Community and Human Services.

Site Work Performed

Over the following several weeks, members of The Spangenberg Group and their site teams did site work directed primarily at the first component of the project -- to describe and analyze King County's existing public defense system. From January 18-21, 2000, Mr. King and Mr. David Carroll of The Spangenberg Group were on site, along with Mr. Robert Briney, the Chief Legal Defender of Maricopa County, Arizona, and Mr. David Freedman, an independent capital case investigator from San Francisco, California, who specializes in mental health issues. The focus of this visit was on two of the agencies (NDA and ACA), the mental health court, the use of investigators and social workers generally, and the screening function of the Office of Public Defense.

On January 31, 2000, Mssrs. Spangenberg and King returned to Seattle for more site work, along with Mr. Carl Holmes, the Chief Public Defender of Orange County, California, Mr. Mark Stephens, the elected Public Defender of Knox County, Tennessee, and Mr. David Newhouse, The Spangenberg Group's Computer Analyst. The site team spent four days interviewing attorneys and management at TDA and SCRAP, as well as

observing courtroom proceedings and meeting with other policy level persons, both individually and during a meeting of the Oversight Committee.

The Spangenberg Group made a fourth site visit from February 28-March 3, 2000, with a site team consisting of Mr. Spangenberg, Mr. King, and Ms. Elaine Kurtz, the Chief of Staff of the New York Legal Aid Society. This visit focused on policy level meetings with persons such as Mr. Jim Crane, Judge Spearman, Ms. Barbara Gletne, Councilman Nickels, Ms. Mary Yu, Mr. Steve Nolen, Ms. Beth Goldberg, the Agency Directors and the Oversight Committee.

In March 2000, The Spangenberg Group delivered a preliminary report to the Oversight Committee, which contained a variety of issues for discussion. Over the next two months, The Spangenberg Group made four more site visits. During each visit, the Oversight Committee met to discuss the issues and to reach consensus on the recommendations contained in this report.

Outline of the Report

This report is divided into several chapters. Chapter One contains a description of King County's existing public defense system. Chapter Two describes and analyzes the public defense systems in comparable jurisdictions throughout the country. Chapter Three contains the Oversight Committee's Findings and Recommendations. Chapter Four outlines the short-term tasks that the Oversight Committee intends to address in the next few months. Appendix A is a summary of the comparative costs of various alternatives that the Oversight Committee considered in reaching its Findings and Recommendations.

Chapter One – King County’s Existing Public Defense System

As noted in the preface to this report, the overall criminal justice system in King County is one of the best of the large urban counties that The Spangenberg Group has evaluated in the last few years. Nevertheless, there are several problems of a systemic nature that need to be addressed. Each component of the criminal justice system is an integral part of an overall system. Policies adopted by one component often affect the resources and operations of the other components. For example, if a court creates an additional docket, then court staff, court services, security, jail staff, probation officers, prosecutors and public defenders all have to devise new ways of responding to the docket. Various policies adopted by public defenders and prosecuting attorneys affect the ability of the courts to process cases. The Spangenberg Group did not approach this study as one that would threaten the quality and manner of services provided by public defenders, but one that looks at the activity of public defenders in the larger criminal justice structure. Solving the problems identified in this report will require the active cooperation of the heads of all of the county criminal justice agencies, the County Executive and the County Council.

Prior Studies of the King County Indigent Defense System

In the last fifteen years, King County has conducted a number of studies of various elements of its criminal justice system, including several studies of its public defender system. Representative reports on the county’s criminal justice system from the past three years alone include:

Report and Recommendations to the Criminal Justice Council (March 24, 1999)
prepared by the Juvenile Court Caseflow Project Work Group.

Recommendations for the King County Mental Health Court (August 1998),
prepared on behalf of the Mental Health Court Task Force.

*The Misdemeanant Study: Misdemeanors and Misdemeanor Defendants in King
County, Washington* (April 1998), prepared by Christopher Murray & Associates,
The Mountain-Whisper-Light Statistical Consulting and M. M. Bell, Inc.

King County Juvenile Justice Operational Master Plan Final Draft Report,
(August 1998), prepared by Chinn Planning, Inc. in association with CGA
Consulting Services, Inc.

The Felony Study: Felonies and Felony Defendants in King County, Washington
(April 1999), prepared by Christopher Murray & Associates, The Mountain-
Whisper-Light Statistical Consulting and M. M. Bell, Inc., and *Supplement to the
Felony Study: Failure to Appear in King County Superior Court*, (April 1999), by
Pretrial Services Resource Center.

The Spangenberg Group has previously conducted two studies concerning the King
County indigent defense system. In October 1989, The Spangenberg Group published a
*Study of Proposed King County Operated and Managed Public Defense Program Final
Report*, which was prepared at the request of the King County Public Defense program.
Like the current report, that prior study was completed with the assistance of Mr. Peter

Moy. In November 1994, The Spangenberg Group prepared an *Analytical Review of “Public Defense and Prosecution Funding in King County: A System Out of Balance”* on behalf of the Office of Public Defense.

King County Demographics

King County, Washington, has a population of almost 1.7 million persons. It is the most populous county in the State of Washington and the twelfth most populous county in the United States.³ Almost a third of King County’s residents live in the City of Seattle, the largest city in both the county and the state. For this reason, perhaps, King County and the City of Seattle have a symbiotic relationship. Thus, while this study focuses on services provided by King County, the City of Seattle is considered, also.

During the last two decades of the twentieth century, King County’s population grew at a rate of about 1.5% per year, and this growth is projected to continue through 2010.⁴ King County’s population is approximately eighty percent Non-Hispanic Caucasian, ten percent Asian or Pacific Islander, five percent African-American, three percent Hispanic and one percent Native American.⁵ Median household income in 1995 was \$44,776.⁶ The U.S. Census Bureau estimates that between seven and ten percent of King County’s population lives at or below the poverty level.⁷

³ *1998 Annual Growth Report*, Office of Regional Policy and Planning (as published at www.metrokc.gov/exec/orpp/agr/agr98/quick_facts.htm).

⁴ Id.

⁵ Id.

⁶ *Model-Based Income and Poverty Estimates for King County, Washington in 1995*, www.census.gov/hhes/www/saipe/estimate/cty/cty53033.htm (February 1999).

⁷ Id.

As it has across America, the overall rate of serious crime has been declining in King County in recent years. For example, according to the FBI Uniform Crime Reporting System, reported violent crime in King County from 1995 to 1998 is down approximately 10%.⁸

While the crime rate has declined recently, the average daily population in King County Correctional Facilities continues to increase steadily. In 1990, the Average Daily Population (ADP) was 1,745 persons. Each year since then, the ADP has risen slightly, and the ADP in 2000 (through February) was almost 3,000 persons.⁹

King County and Seattle Government

King County has an Executive-County Council form of government. Mr. Ron Sims was elected King County Executive in 1997. The current Metropolitan King County Council has 13 members, each elected by geographical district to a four-year term. The Council's Law, Justice, & Human Services Committee is chaired by Councilman Greg Nickels.

The City of Seattle is governed by its Mayor, Mr. Paul Schell, and by a city council, comprised of nine members elected at large.

King County's Criminal Justice System

The King County government is the largest provider of criminal justice services in the region. The FY 2000 budget for Law, Safety and Justice Programs is approximately

⁸ Table 7: Part I, Crimes and Clearances Reported by Agency, County, Offense. *Crime in Washington State Annual Reports*, Wash. Ass'n of Sheriffs and Police Chiefs (1997-1998, 1996-1997, and 1995-1996).

⁹ *King County Correctional Facility Average Daily Population*, received from Jim Harms March 15, 2000.

\$342 million.¹⁰ Of that, approximately \$57 million is from dedicated revenue sources, while the remaining \$285 million comes from the General Fund.¹¹ Law, Safety and Justice thus represents 63.5% of the total Current Expense budget for King County in FY 2000. Of the total amount spent (\$342 million), 29.5% (\$101 million) goes to adult detention and youth services and 27.7% (\$95 million) to the Sheriff's Office.¹² The court systems, including judicial administration, receive 17.8% (\$60,764,784) of the total. The Prosecuting Attorney and Office of Public Defense will receive 10.5% (\$35,908,935) and 6.6% (\$22,485,306) respectively.¹³ King County and the City of Seattle provide the vast majority of funds for indigent defense, with the State of Washington providing some funds for BECCA cases.¹⁴

The Policing Function

Mr. Dave Reichert is the current Sheriff of King County, elected in 1998. His office provides policing services in all unincorporated areas of King County, as well as in the cities that contract with King County for policing services. The population served by the Sheriff's Office is 546,172.¹⁵ The City of Seattle and some other incorporated areas of King County maintain separate police departments.

¹⁰ 2000 Adopted Budget.

¹¹ Id.

¹² Id.

¹³ The remainder goes to Emergency Management, Special Programs and the Automated Fingerprint Identification System. The CJ and CX OPD Adopted Budget does not fund dependency matters for the full year. It is anticipated that funding for these cases will cost an additional \$1.9 million in FY 2000.

¹⁴ BECCA is a shorthand reference to juvenile matters such as At Risk Youth, Children in Need of Services and Truancy.

¹⁵ See www.metrokc.gov/sheriff/anreport.htm

The Prosecution Function

King County and the City of Seattle maintain separate prosecuting attorney's offices. Mr. Norm Maleng is the elected King County Prosecuting Attorney, a position he has held since 1979. His Office of the Prosecuting Attorney employs 220 attorneys, 250 administrative staff, and a variety of interns, students, and volunteers. The Office's Criminal Division represents the state and the county in criminal matters in the King County District and Superior courts, the Supreme Court of Washington and the United States Supreme Court. One hundred forty attorneys make up the Prosecuting Attorney's Criminal Division, which is divided into several units, including: the Special Assault Unit, Special Drug Unit, Persistent Offender Prosecution, Appellate Unit, District Court Unit, Juvenile Court Unit, Sentencing Unit and Trial Teams.¹⁶

Mr. Mark H. Sidran is the Seattle City Attorney. The Criminal Division of his office employs 35 attorneys, four administrative staff, and several law students, volunteers and paralegals. The Criminal Division prosecutes City of Seattle cases, which are mainly DUI, suspension of drivers' licenses and domestic violence cases. The division consists of several units such as the General Prosecuting Unit, Domestic Violence Unit, Victim Advocacy Unit, Case Preparation Unit and Volunteer Unit.

The Court System

King County's court system is two-tiered, with a District Court of limited jurisdiction and a Superior Court of general jurisdiction. The District Court is divided into ten geographic divisions, with one presiding judge. Along with a civil caseload, the

district courts hear criminal misdemeanor and gross misdemeanor cases.¹⁷ In addition, the district courts provide municipal court services to seventeen cities, though none of those cities uses King County’s public defense services.¹⁸

The Superior Court is divided into three divisions – civil, criminal and juvenile – each of which is administered by a presiding judge. The criminal division is divided between the King County Courthouse (the “KCCH”) in downtown Seattle and the Regional Justice Center (the “RJC”) in the city of Kent, some 20 miles to the south. The Superior Court’s Juvenile Division is located in a stand-alone facility in Seattle (although lengthy trials and hearings are conducted at the KCCH).

The City of Seattle maintains its own Municipal Court, with jurisdiction over misdemeanors and gross misdemeanors. Cases heard in this court include: domestic violence, driving under the influence, driving with license suspended (DWLS), and several non-traffic criminal offenses.

The Office of Public Defense

The public defense function in King County is unique among systems used in the United States. The County provides funds for indigent defense through its own Office of Public Defense (OPD), which is administered by Mr. James C. Crane. The Office of Public Defense is responsible for screening persons to determine whether they are financially eligible for public defense services, assigning cases to attorneys (either public

¹⁶ See www.metrokc.gov/proatty/crimdiv.htm

¹⁷ A misdemeanor is any crime punishable by a fine of not more than one thousand dollars, or by imprisonment in a county jail for not more than ninety days, or by both such fine and imprisonment. RCW 9A.20.010. A gross misdemeanor is punishable by imprisonment in a county jail for more than 90 days, but not more than a year. *Id.*

defenders or private counsel), and negotiating and administering contracts with the four private, non-profit public defender agencies, described below. The Office of Public Defense does not provide any direct representation to persons charged with criminal offenses, but is responsible for managing the funds for indigent defense provided by King County and the City of Seattle.¹⁹

In FY 2000, the Office of Public Defense's total adopted budget is \$27,900,912. Approximately \$22.8 million of that will go to agency contracts (CJ, CX and a grant from Seattle amounting to \$5,415,606)²⁰; about \$2 million goes for private appointed counsel; \$1.1 million for expert services; and \$1.2 million for administration.²¹

The Public Defense Agencies

The Office of Public Defense presently contracts with four private, non-profit "agencies" for the vast majority of legal services to indigent persons in the variety of cases for which a person is entitled to appointment of counsel. Each agency has a board of directors and is managed by a Director. Following is a brief description of each of the four agencies.

The Defender Association

The Defender Association (TDA) is the oldest and largest of the four defense agencies. Its history can be traced back to 1969, when it was founded as an office of five attorneys working only in Seattle Municipal Court. Under the direction of Mr. Robert

¹⁸ Law, Safety & Justice Program Plan, at B-132 (FY 2000).

¹⁹ The Office of Public Defense also administers some small grant funds for public defense services.

²⁰ There are additional expenditures by the agencies that are not reflected in county budgets, e.g. federal Bureau of Justice Assistance grants.

Boruchowitz for the last twenty-one years, TDA has grown to an office of more than ninety attorneys and fifty support staff, who handle cases of almost every type for which there is a right to counsel. Today, TDA handles the majority of adult felonies at the KCCH and is a major provider of services in Seattle Municipal Court. TDA is the only agency that does involuntary commitment cases and it works with a federally-funded program called TeamChild.

Associated Counsel for the Accused

Associated Counsel for the Accused (ACA) is the second oldest and second largest of the four agencies. Founded in 1973, ACA grew substantially after another agency dissolved and ACA absorbed many of its attorneys. Recently, Mr. David Chapman was appointed director of ACA, which has more than sixty attorneys and more than thirty support staff. Except for its smaller size, ACA's caseload distributions look similar to those of TDA. More of ACA's adult felony caseload is at the RJC (whereas TDA has more adult felonies at the KCCH) and ACA's misdemeanor caseload is more in the King County District Courts (relative to TDA's caseload in the Seattle Municipal Courts).

The Society of Counsel Representing Accused Persons

The Society of Counsel Representing Accused Persons (SCRAP) is a major provider of defense services in juvenile matters. A need for representation in this area was the motivating factor for SCRAP's creation, in 1976. Ms. Anne Daly assumed the

²¹ Approximately \$300,000 goes to other, grant-funded programs. *2000 OPD Financial Plan*.

role of director in 1999, a year in which SCRAP represented about one third of indigent juvenile offenders, and about half of all BECCA and dependency cases assigned by OPD (both downtown and at the RJC). SCRAP does not do any Seattle Municipal Court cases, but it is the only agency that does contempt of court matters. SCRAP has about sixty attorneys and thirty-nine support staff.

Northwest Defender Association

Northwest Defender Association is the newest and smallest of the four agencies. Northwest Defenders Association began operation in 1988, with Mr. Rufus McKee as its director. During his tenure, NDA has grown from four attorneys and two support staff to its present number of 25 attorneys and 15 support staff. NDA provides services in four major areas – felonies at the KCCH, juvenile offenses, BECCA and Seattle Municipal Court. NDA does not provide services in the King County District Courts.

King County's Approach for Delivering Public Defense Services

King County uses a hybrid of horizontal and vertical representation in delivering services to indigent persons in the criminal justice system. Pure horizontal representation, in which a case is passed from one attorney to another as it proceeds through different stages of the criminal justice process, is relatively uncommon. Nevertheless, at least three major jurisdictions employ this type of approach: Philadelphia, Pennsylvania; Albuquerque, New Mexico; and Allegheny County (Pittsburgh), Pennsylvania. Both the National Legal Aid and Defender Association (NLADA) and the American Bar Association have expressed a preference for vertical

representation, by which the attorney originally appointed to a case stays with a client through disposition of the case.²²

In describing King County's system as a "hybrid" of horizontal and vertical representation, attention is focused on the early stages of a case. In these early stages, especially in cases when the represented person is in custody, the present system provides an "Attorney of the Day" in many situations. These Attorneys of the Day, or "AODs," appear at the early hearings, such as the first appearance and arraignment. The AODs handle most, if not all, of the cases that are called at a particular hearing when no private attorney appears. Individual cases are then "passed" to another attorney for the next hearing until the arraignment hearing, after which cases are finally assigned to an attorney for the remainder of the proceedings.

The use of an Attorney of the Day is not unheard of and it has its advantages. For example, in New York City, the New York Legal Aid Society uses experienced some AODs to dispose of most misdemeanor matters in the early stages, which conserves resources. The use of AODs in King County, however, is significantly different than the way AODs are used in other systems around the country, because cases are frequently passed, not just from one attorney to another, but *from one agency to another*. As discussed later in this report, this structure does not always result in the highest quality of representation and it may add expense to the system as a whole.

²² Indeed, the NLADA says that "Defender offices should urge changes in court structure and administration to reduce fragmentation and to facilitate continuous representation." *Guidelines for Legal Defense Systems in the United States*, Standard 5.11 (NLADA 1976). Available at www.nlada.org/standards/glds.htm. See also, *ABA Standards for Criminal Justice, Providing Defense Services* Section 5-6.2 (1992).

The Functions of the Office of Public Defense

The Screening Function

King County's indigency screening procedures are largely governed by *R.C.W.* Chapter 10.101. That law contains a legislative finding that "effective legal representation should be provided for indigent persons and persons who are indigent and able to contribute, consistent with the constitutional requirements of fairness, equal protection, and due process in all cases where the right to counsel attaches."²³ Pursuant to the statute, a person is deemed indigent if, at any stage of the proceeding, he or she is:

- (a) receiving one of several types of public assistance;
- (b) involuntarily committed to a public mental health facility;
- (c) receiving an annual income, after taxes, at or below one hundred twenty-five percent of the current federally established poverty level; or
- (d) unable to pay the anticipated cost of [private] counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.²⁴

A person whose "available funds"²⁵ are not sufficient to pay the anticipated cost of private counsel but who is able to pay a portion of the cost is deemed "indigent and able to contribute."²⁶

²³ *R.C.W.* § 10.101.005 (1989).

²⁴ *R.C.W.* § 10.101.010(1)(a)-(d).

²⁵ Available funds are defined as liquid assets and disposable net monthly income, less any bail obligations *R.C.W.* § 10.101.010(4). Liquid assets and disposable net monthly income are further defined in the statute. See *R.C.W.* § 10.101.010(4)(a) & (c).

²⁶ *R.C.W.* § 10.101.010(2).

The Office of Public Defense has a staff of ten to twelve designated interviewers, as well as other staff, who are responsible for screening applicants for public defense services. As indicated above, a screener determines whether an applicant is indigent, ineligible, or “indigent and able to contribute.” Persons who fall into this last category are offered a public defender attorney for a fixed fee, depending on the nature of the charges. Such persons are required to sign a promissory note to guarantee payment.

It is worth noting that the statute requires consideration of the “anticipated cost of [private] counsel.”²⁷ At the time that this provision was added to the Washington statute, many states had similar provisions. Many of those states have since removed such language, largely because it significantly expands the class of eligible persons. The Office of Public Defense was not able to determine how many persons in King County qualify for services on the basis of this provision alone.

Screeners from the Office of Public Defense conduct interviews at several locations, including: the OPD office; some King County courts; Seattle Municipal Court; and the Juvenile Court. Interviewers use a detailed financial assessment instrument to determine eligibility for a public defender. Interviewers ask applicants a variety of questions, including: whether they own real property, autos, stock, etc.; whether they are employed; whether or not they have any bank accounts and, if so, how much money is in the accounts. For example, at the Seattle Municipal Court, persons who are in custody are screened just prior to arraignment. The OPD screeners have a secured screening room in the King County Correctional Facility, with a computer linked to the OPD

²⁷ *R.C.W.* § 10.101.010(d).

system. Persons are screened through a window in the holding cell next to the courtroom. If it is determined that a person has received county-paid representation previously, it is presumed that he or she is eligible and the screening ends. Such persons are normally assigned to the defender agency that previously represented him or her.

At arraignment, out-of-custody applicants are told to go to the OPD offices on Second Avenue to be screened prior to their next court date. Applicants do not have to make an appointment to be screened, and OPD maintains a small staff in the office to conduct financial interviews for out-of-custody defendants between 8:30 a.m. and 4:30 p.m. daily. Out-of-custody applicants are asked to bring documentation of financial information such as most recent pay stubs, unemployment stubs, bank statements and/or tax returns.

Since 1991, indigent defendants applying for appointed counsel in King County have been expected to pay a processing fee. The King County Council established the fee as a way to recoup the administrative costs of processing applicants.²⁸ Initially, the fee was set at \$5, but was amended to \$25 effective January 1, 1997. The fee is assessed only against out-of-custody defendants facing felony charges. If an applicant does not have the ability to pay at the time of screening, the OPD attempts to collect it at a later date. Revenue from the processing fee goes into the county's current expense fund. In FY 1999, \$30,071 was collected through the fee.

Other OPD screeners are responsible for determining the financial eligibility of parents involved in dependency matters, screening parents of youthful offenders, and

²⁸ King County Ordinance 10167 (Nov. 25, 1991).

conducting courthouse interviews of out-of-custody defendants in the VUCSA Court.²⁹ Computers are not available to these screeners, so the forms are completed manually and entered into the OPD system at a later date. Also, OPD has one interviewer whose duties include verifying financial information provided to OPD.

The vast majority of defendants are determined to be indigent and given county-paid representation. Out of 38,982 individuals that OPD reported it screened in FY 1999, 90.3% (35,201) were found to be indigent. An additional 6.1% (2,379) were deemed indigent-but-able-to-contribute. Only 3.6% (1,402) were found to be ineligible.

The Office of Public Defense provided The Spangenberg Group with information concerning promissory note collections during FY 1999. These collections are based on all cases handled in prior years (not just FY 1999) for persons who were deemed indigent-but-able-to-contribute. In 1999, \$436,068 was collected.³⁰

The Case Assignment Function

Each of the agency contracts contains a schedule that sets out the total number of cases that the Office of Public Defense expects to assign to the particular agency in the coming year, broken down by case type and by facility. For example, NDA's FY 2000 contract projects that the Office of Public Defense will assign 1,343 felonies at the KCCH to NDA in the year 2000. Each agency contract also permits the Office of Public Defense to vary slightly from the agreed upon number of assignments during a particular quarter or over the entire year. In the FY 2000 contracts, there is a 7.5% quarterly

²⁹ VUCSA stands for Violation of the Uniform Controlled Substance Act.

³⁰ King County Office of Public Defense, 99finplx.air (2/24/00)

variance and a 2.5% yearly variance allowed in felony matters; all other type cases allow a 10% quarterly and a 5% yearly variance.³¹

The Office of Public Defense screeners assign cases to the public defender agencies after completing the financial interviews. Screeners use the Office of Public Defense computer to see if an applicant has been assigned to one of the defender agencies before. If so, the person is assigned to that agency again. Screeners then search the Office of Public Defense database for named co-defendants to detect potential conflicts. Outside of that, screeners are given the discretion to assign cases to any of the public defender agencies that handle the specific type of case. During interviews with The Spangenberg Group, screeners indicated that there are memos distributed to tell them when one or another agency is getting close to their maximum cases per quarter -- though there was some difference of opinion among the screeners as to how often these memos are distributed.

In 1999, this system failed to work properly with respect to BECCA cases, such that the agencies received a total number of assignments far more or far less than the contracted amounts (including variances) for the first half of 1999. Meanwhile, payments to the agencies continued on the basis of the contracted amounts, so that the agencies were either not getting paid for the increased work or were getting paid for work they weren't being assigned. As a result, the Office of Public Defense has implemented new procedures to report on caseload and the Agency Directors meet twice a month with the Administrator of the Office of Public Defense to resolve any differences.

³¹ The variances are Exhibit I to the 2000-2001 Agency Contracts.

Management and Oversight

Each of the agencies provided information to The Spangenberg Group and Mr. Moy regarding their requested budget for FY 2000, which included a number of separate line items relative to overhead. In reviewing each of the agency's requests for overhead funds by line item, The Spangenberg Group noticed some substantial disparity in dollar requests among the four agencies. In discussing these disparities with the Office of Public Defense, it appears that the Office of Public Defense is satisfied that each line item is reasonable. The disparities might exist because different agencies charge similar items to different categories or because the agencies take different approaches to buying or renting capital items. In any event, the budgeting process appears to focus on the "necessary" items, such as rent, that must be preserved from year to year, while the agencies are given substantial discretion in determining how to spend their remaining overhead budgets. Accordingly, The Spangenberg Group has expressed concerns about the level of review currently undertaken before the overhead budget line items are approved for each agency.

Projecting Caseload

Each year, in preparation for contract negotiations, the Office of Public Defense develops caseload projections for the next year in the various categories of cases. A five-year history of actual assignments is subjected to a regression analysis using the population of King County as the independent variable. Information is also obtained from the Prosecuting Attorney's Office and Attorney General's Office on their expectations for future case filings. The Office of Public Defense takes into account

recent legislation, economic indicators, and any initiatives by the King County Sheriff or Seattle Police. Mr. Crane then applies his best judgment to all of the above to reach a final projection. Nevertheless, the process for projecting caseload remains an area of great confusion for persons outside the Office of Public Defense, including the consultants who conducted this study.

Expert Witnesses

Some years ago, the courts delegated to the Office of Public Defense the function of approving requests for funds to hire experts. Thus, the Office of Public Defense has a budgeted amount for experts (about \$1.2 million) and attorneys who wish to hire an expert must apply to the Office of Public Defense for approval. Some public defender attorneys have expressed frustration with the fact that they must apply to the Office of Public Defense for funds to hire experts. Some of those who are frustrated have referred to the Office of Public Defense's lack of an attorney with experience practicing criminal defense. Others have raised concerns regarding what they feel is an unnecessary delay in the Office of Public Defense reviewing requests for expert funds. The Office of Public Defense understands these concerns and would welcome additional staffing in this area.

It does not appear that the courts want to reclaim the responsibility for approving expert funds requests. Similarly, none of the agency directors has expressed a desire to assume the responsibility themselves. Thus, for the moment, it appears that the consensus is that the function of approving expert funds should remain with the Office of Public Defense, but that the current system of doing so should be reviewed. The Spangenberg Group has recommended, at a minimum, that the Office of Public Defense

hire an attorney with criminal defense experience whose job includes reviewing requests for expert services.

Functions of the Agencies

Maintaining and Reporting Caseload Data

The Spangenberg Group asked each of the agencies to provide some basic caseload data, such as the total number of cases assigned to the agency in 1999, organized by type of case, and the total number of cases that the agency disposed of in 1999, organized by type of disposition. Such reports are absolutely necessary for internal management and supervision as well as for providing statistical data to the courts and to the county. Of the four agencies, only one was able to produce the requested data in a readily usable form on relatively short notice. One of the agencies was hindered by the fact that it recently converted from an antiquated computer system to a more modern case management system and the 1999 data is still in the old format. Nevertheless, this exercise revealed a serious deficiency in the case management systems of the four agencies and suggests larger problems concerning interagency data sharing.

The lack of organized caseload data makes it difficult to assess the caseload handled by each of the four programs and points towards the need for further study in this area. Even if the agencies continue to maintain different case tracking systems, they must develop a method to maintain these data consistently over the course of the year.

Investigators & Social Workers

There is a dramatic range of background, training, supervision and organization with respect to the investigative staff of each agency. In some instances, training and supervision are not emphasized, while some agencies have extensive training and supervision programs. One of the major issues facing the investigative and social work staffs concerns salary parity. Recently, the County agreed to add additional salary funds to the appropriations over the next several years, but this amount is widely viewed as inadequate to achieve true parity. This issue was not specifically addressed in detail by the Oversight Committee.

Conflict Cases

The agency contracts contain the following language concerning conflicts of interest: “While it is difficult specifically to define a conflict of interest, it is important that participants in the representation of indigent defendants be cognizant of the potential for conflicts and recognize that their management of conflicts is governed by the mandatory provisions of the Washington State Rules of Professional Conduct, as adopted in 1985.” The contracts also require the agencies to notify OPD of any potential conflicts within ten days of receiving discovery.

The Office of Public Defense has a form on which the agencies report conflicts of interest. According to information supplied by the Office of Public Defense, about five percent of the cases screened in which the client is found eligible for services result in a conflict among all four agencies and are referred to the private court appointed counsel

program. The Spangenberg Group has found this to be a high level of conflicts, compared with other large, urban public defender systems.

It does not appear that any of the four agencies have a written conflict policy. An informal policy exists, but it appears to be based primarily on practical considerations. In any event, there are no controls on the use of conflicts other than the requirement that an agency state a colorable claim of conflict on the form provided to the Office of Public Defense. There should be one consistent written definition of conflicts for all agencies and The Spangenberg Group believes it should be developed and adopted by OPD in consultation with all of the agencies.

The current database maintained and used by OPD to assign cases does not appear to adequately address agency conflicts. The findings on technology in this report refer to ways of improving this process. Many cases referred to an agency that might have been identified as a conflict by OPD are returned and reassigned to another agency, wasting the time and money of the court, the clients, the Office of Public Defense, and the agencies.

Processing Criminal Cases in King County

Superior Court Felonies – Warrantless Arrest of an Adult

An adult arrested without a warrant is normally booked into the King County Jail. Such a person is entitled to a Probable Cause hearing within 48 hours of the arrest.³² Usually, that “first appearance” hearing takes place the day following the arrest (the

³² *Wash. R. Crim. P.* 3.2A(a) (West 1999).

hearings are held every day at 2:30 p.m., except on Sundays) and is conducted by the District Court's Jail Division at the KCCH. As a matter of practice, the police reports (known as Suspect Information Reports or "SIRS") are obtained by the prosecuting attorney on the morning of the hearing. Prior to the hearing, a court services officer may prepare a report for the Court, but the short amount of time between the arrest and the first appearance makes it difficult to obtain reliable information. Usually, an arrested person is not screened by the Office of Public Defense before the hearing. Nevertheless, if an arrested person has not retained counsel, the person will be represented by an "Attorney of the Day," regardless of his or her ability to pay. Attorneys from The Defender Association handle the hearings at the KCCH. Attorneys from SCRAP do so at the RJC. TDA's practice is to rotate this assignment so that a different attorney appears at the calendar each day. SCRAP assigns this calendar to a few attorneys, who perform this duty for several months at a time.

In most cases, the issue of probable cause for investigation is submitted to the Court on the basis of the written information contained in the police reports.³³ Both the Court and the Attorney of the Day review the reports simultaneously, as the cases are called. The Attorney of the Day may argue that the reports do not sustain a finding of probable cause and, if the Court agrees, the Court may order the person released. In the vast majority of cases, however, the Court finds probable cause and the hearing proceeds to the question of bail.

³³ *Wash. R. Crim. P.* 3.2A(b) (West 1999).

On the issue of bail, the Prosecuting Attorney is permitted to make a request for a certain bail amount and she may offer evidence in support thereof. Such evidence may come in the form of references to the court services report and in statements of the arrested person or the victim as recorded in the SIRs or relayed through testimony of a victim advocate. At this point, the Attorney of the Day may respond in kind, but the response is necessarily limited by the fact that the attorney has only just met the client and learned the facts either during or just before the hearing. There is too little time to prepare for the issue of bail, either by interviewing the client, verifying information (including prior criminal history), contacting family or friends or obtaining records. Thus, the Court is forced to make a bail decision based on limited and sometimes unreliable information and, often, without a meaningful presentation from the defendant. The obvious result is that, in most cases, the court imposes the bail requested by the prosecuting attorney.

The State is required to file charges (an Information) within three days of arrest, weekends and holidays excluded. Otherwise, the Court must order the defendant released from custody or any other conditions of release.³⁴ Thus, the Prosecuting Attorney must make a decision within that time either to file an Information, in which case the person may remain detained – or not to file, in which case the person is “free to go” (although charges may be filed later). If the Prosecuting Attorney chooses to file a felony charge, the person will have to appear for arraignment, this time in Superior Court.

³⁴ *Wash. R. Crim. P.* 3.2B(c) (West 1999).

At the felony arraignment, all persons without private counsel present are represented by an Attorney of the Day, currently an attorney from either ACA or TDA.

A detained person has the right to a full-blown bail hearing at the arraignment, but practice permits only “one bite at the apple.”³⁵ Typically the Attorney of the Day at arraignment can be no better prepared for bail issues than the AOD at first appearance, and for the same reasons. Furthermore, information obtained at the first appearance is not passed on to the AOD at arraignment. Thus, the practice is generally to postpone the bail issues until after the Office of Public Defense assigns an agency (and an attorney from that agency can set a hearing date) which may take a week or more. The practical effect of these procedures is that many persons may be detained for up to two weeks (perhaps longer if a conflict develops and re-assignment is necessary) before an informed argument can be made in favor of releasing the person prior to trial.

Every year since 1990, half of the average daily population in the KCCH has been pre-sentence. The Spangenberg Group was told by many individuals that some of these defendants could be released substantially earlier without endangering the public safety. The primary reason they are not released earlier, apparently, is that the paperwork has not caught up to them for two or more weeks. This problem is clearly systemic in nature and one that the county should examine as soon as possible, because any reduction in the daily population could result in a substantial cost savings to the county.

³⁵ See *Wash. R. Crim. P.* 3.2(a) (West 1999).

The Case Credit System

The case credit system is one of the most important provisions of the agency contracts. It is also one of the most confusing, according to many persons The Spangenberg Group interviewed. The system of distribution of cases and case credits among the four agencies is the most complicated system The Spangenberg Group has observed in any major public defender system in the country. Annually, each agency is assigned a certain number of cases or case credits, as well as certain special services, such as special calendars, 24-hour phone requirements, in-custody arraignment sessions and special hearings.

Together with the caseload standards, discussed below, case credits are used to develop budgets and project staffing needs for each of the agencies. Each of the agency contracts contains a detailed definition of the word “case.”³⁶ Essentially, cases are defined by their disposition, so that no matter how many charges are involved, all charges are considered a single “case” if they “will ultimately lead to one disposition.”³⁷ Various types of cases are assigned a particular case credit value. A typical felony case, for example, is worth one case credit.³⁸ Similarly, misdemeanors, juvenile offender matters and juvenile dependency matters are also worth one case credit each. Other proceedings or types of cases are assigned other credit values. A non-capital homicide is worth two credits while a probation review hearing is worth one-third of a credit.

The agency contracts also provide for extra credits in complex cases, particularly capital cases, aggravated homicide, “two and three strikes” cases, and multi-count felony fraud. During the course of a complex case, an agency may apply to OPD for extra

³⁶ Agency Contracts, Exhibit V (2000-2001).

³⁷ Agency Contracts, Exhibit V, para. 2(a) (2000-2001).

³⁸ A Case Credit Application Schedule is incorporated in each agency contract. Agency Contracts, Exhibit III (2000-2001).

credit. For example, the agency may receive 12.5 extra credits per month when one of its attorneys is handling an aggravated homicide. The practical effect of extra credits in a complex case is to allow an attorney (in capital cases, two attorneys) to work full-time on the case and still satisfy his or her caseload standard.

As the above example suggests, caseload standards work in conjunction with case credits in a design that is intended to insure that attorneys carry a full workload, without overloading an individual attorney. Caseload standards are agreed to be “average annual caseloads per attorney.”³⁹ For example, the caseload standard for felony cases is 150 cases per attorney per year (or 12.5 cases per month).⁴⁰ Thus, in a very real sense, case credits are the currency that allow the Office of Public Defense to budget enough money to compensate the agencies for the attorneys, administration, support staff and overhead necessary to handle the assigned caseloads.

³⁹ Agency Contracts, part XI. A. (FY 2000-2001)

⁴⁰ Caseload standards are also a product of state law, which requires each county or city providing indigent defense services to adopt standards, including “case load limits.” RCW 10.101.030. The Washington Bar Association has endorsed the standards of the Washington Defender Association, which may be found online at www.defensenet.org.

Chapter Two – Public Defense in Similar Jurisdictions

The Oversight Committee asked The Spangenberg Group to review several alternative systems for delivering indigent defense services in King County. The RFP asked The Spangenberg Group to consider alternatives to the current system that might improve efficiency and effectiveness. Among the models that TSG was asked to examine were:

- Create a county office of public defense where the public defender is appointed either by the King County Executive, the Superior Court, or by an independent commission of attorneys;
- Create a separately-elected public defender on par with the Prosecuting Attorney, operating a county office of public defense;
- Maintain the current structure of OPD, except place the administration of OPD under the purview of a lawyer or former judge;
- Maintain the current structure of OPD, but consider contracting with less than four, or more than four private non-profit agencies; and
- Move away from contracting altogether. Maintain OPD, but shift contract funds into county FTE public defenders.

In reviewing the various options, and in accordance with the requirements of the RFP, The Spangenberg Group examined several different systems of delivery in other large, urban counties around the country.

Comparable County Selection

The Oversight Committee began the process of selecting comparison counties by asking The Spangenberg Group for a list of potential sites. The Spangenberg Group prepared a list of the fifty U.S. counties whose population exceeded 800,000 in 1994. The Spangenberg Group suggested nine counties from this list -- considering their size, type of indigent defense system, and other factors. In January 2000, the Oversight Committee approved the nine sites as comparable jurisdictions. During the course of the study, however, The Spangenberg Group determined that the data from two of the counties was insufficient to draw reasonable comparisons, so the final list of comparative counties is as follows:

<i>Jurisdiction</i>	<i>Population⁴¹</i>
<i>Maricopa County, AZ</i>	2,861,395
<i>Orange County, CA</i>	2,760,948
<i>Kings, NY</i>	2,268,297
<i>Dade County, Fla.</i>	2,175,634
<i>King County, WA</i>	1,664,846
<i>Santa Clara, CA</i>	1,647,419
<i>New York, NY</i>	1,551,844
<i>Philadelphia, PA</i>	1,417,601

⁴¹ 1999 estimates by U.S. Census Bureau. <http://www.census.gov>.

Description of Comparable Counties

Maricopa County, Arizona

Population: 2,861,395
Primary System: Public Defender
Primary Funding: County
Death Penalty: Yes

The Maricopa County Public Defender is a county agency that is the primary provider of public defender services in the county. For a number of years it was the only public defender in Maricopa County, and all conflict and case-overload matters were handled by private court-appointed counsel on a case-by-case basis.

As the costs for conflict cases rose in the late 1980's, the county took over the court appointed conflict system and created an in-house private bar contract system. Initially, the contract system involved death penalty cases, serious felonies, appeals and juvenile delinquency cases.

In an effort to reduce the high cost of contract attorneys and improve the quality of representation, in April of 1995 Maricopa County established a second but separate public defender program called The Office of the Legal Defender (OLD), which is designed to handle serious conflicts of the primary public defender in a more effective and efficient manner than the private contract attorneys.

The Chief Public Defenders for both offices are hired independently by the County Board of Supervisors. They both serve at will.

The Office of the Legal Defender is now staffed with 13 attorneys and 14 support staff. Seven of the assistant public defenders do major death penalty cases, first degree murders and major felonies.

The two public defender programs are responsible for all criminal and juvenile offender cases, including appeals in Maricopa County, with the exception of cases that arise out of the City Court in Phoenix. Those cases are handled separately by a contract public defender system.

Maricopa County pays for approximately 95% of all of the costs for indigent defense outside the City of Phoenix, and the state pays the remaining five percent. By law in Arizona, public defenders are not permitted to represent parties in a juvenile dependency case. Thus, all dependency cases in Maricopa County are handled by the private bar under contract.

Orange County, California

Population: 2,760,948
Primary System: Public Defender
Primary Funding: County
Death Penalty: Yes

The Orange County, California Public Defender program is a county agency with a Chief Public Defender appointed by the Board of Supervisors to serve at will.

Until December 1994, private attorneys contracted with the county to represent indigent defendants that the public defender could not represent due to a conflict of interest or case overload. In December 1994, Orange County entered bankruptcy, forcing more than \$40 million in reductions to county agencies mid-way into FY 1995. In an

effort to cut costs immediately after the bankruptcy, the county board of supervisors eliminated the felony and misdemeanor contracts of private lawyers and re-structured the public defender's office into three segmented units so that it could represent the defendants previously served by the private bar. The public defender was required to establish two entirely new offices called the Associate Defender and the Alternate Defender. The new segments were designed to allow the public defender to represent up to three co-defendants without relying upon the private bar.

Indigent defense services in Orange County are funded almost entirely by the county. The Orange County Public Defender program serves all seven courts operating in the county and has branch offices at each court location. Assistant public defenders represent indigents in felonies, felony probation violations, misdemeanors, misdemeanor probation violations, juvenile delinquency, juvenile dependency and mental health proceedings. With the exception of a handful of cases, all appeals are handled by another organization and are funded by the state.

Recent changes in the public defender system have resulted in the third public defender's office handling major homicides and capital cases only. Third co-defendants are once again contracted out to the private bar, as are all first conflict juvenile cases.

New York County and Kings County, New York

New York County
Population: 1,551,844
Primary System: Public Defender
Primary Funding: County
Death Penalty: Yes

Kings County
Population: 2,268,297
Primary System: Public Defender
Primary Funding: County
Death Penalty: Yes

The New York Legal Aid Society (NYLAS) is the primary institutional provider of legal representation to indigent persons in New York City, which includes both Kings County (Brooklyn) and New York County (Manhattan), New York. NYLAS is a private, non-profit corporation, with a board of directors. NYLAS has seven primary divisions:

- the Criminal Defense Division, which handles adult criminal cases;
- the Criminal Appeals Bureau, which handles appeals in adult criminal matters;
- the Juvenile Rights Division, which represents children in both dependency and delinquency proceedings;
- the Civil Division, which represents low-income persons in civil proceedings;
- the Capital Defense Unit, which handles capital cases;
- the Federal Defender; and
- the Volunteer Division.

Each of the divisions is administered and funded separately. Both the Criminal Defense Division (CDD) and Criminal Appeals Bureau (CAB) are funded primarily with county funds while the Juvenile Rights Division and the Capital Defense Unit are funded with state monies. The Criminal Division and the Juvenile Rights Division have separate offices in all of the boroughs except Staten Island. The Criminal Appeals Bureau is located in the downtown office of New York Legal Aid Society.

Historically, all criminal and juvenile cases not handled by NYLAS have been assigned to private court-appointed attorneys in each of the courts in the city. These attorneys are referred to as 18b attorneys; they are named after the state legislation that governs the right to court-appointed counsel in New York State.

In the mid-1990s, New York City introduced an RFP process to give a percentage of the criminal casework handled by CDD and CAB to private contract defenders. Contract defenders now handle roughly twenty percent of the criminal cases formerly handled by CDD. Assigned counsel attorneys continue to handle the remaining conflict of interest cases. Part of the intent of establishing the smaller contract programs was to introduce some level of competition into New York's very large criminal justice system.

One of the more interesting outcomes from the introduction of "competition" into the metropolitan New York system has been the creation of an independent, non-governmental oversight committee to monitor the providers each year. In 1995, the Appellate Division of the Supreme Court, First Department (at the request of several local bar associations and with the agreement of New York City) established the Indigent Defense Oversight Committee. The Oversight Committee conducts annual evaluations of all of the indigent defense organizations operating in the First Department (including NYLAS and each of the contractors). It does not evaluate the 18b private bar program. This organization has become an important component in the evaluation of the defender organizations that bid to provide services.

Dade County, Florida

Population: 2,175,634
Primary System: Public Defender
Primary Funding: State
Death Penalty: Yes

The Dade County Public Defender is the primary provider of public defender services in Dade County and one other smaller county in Florida. The Dade County Public Defender is publicly elected within the local judicial circuit, as are all Chief Public Defenders in Florida. The office has a large downtown facility close to the Circuit Court and four branch offices that serve the juvenile and county courts.

Under Florida law, the state provides funds for all attorneys and other staff. The counties are required to provide space and other utilities. The county is also responsible for funding cases in which the public defender has a conflict or case overload.

In Dade County, the county also provides funds for a large number of full-time contract public defenders that work out of the same offices listed above. The Dade County Public Defender is also responsible for all indigent appeals arising out of several other circuit public defender offices located in the region. This work is paid for by the state. Overall, the Dade County Public Defender office is funded 69% by the state and 31% by the county.

Conflict and overload cases from the public defender are handled by private court-appointed counsel and paid for by the county.

The public defender also handles contempt of court cases, while the Administrative Office of the Courts is responsible for administering a court appointed counsel program for dependency cases.

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Philadelphia, PA

Population: 1,417,601
Primary System: Public Defender
Primary Funding: City/County
Death Penalty: Yes

The primary public defender system for the city and county of Philadelphia is The Defender Association of Philadelphia, a private, non-profit public defender program. A board of directors is responsible for appointing the chief public defender and providing policy and fiscal oversight.

Conflict cases are handled by private court-appointed counsel within the Court of Common Pleas and the Municipal Court. The court-appointed counsel program also handles most homicide cases in the jurisdiction.

The Defender Association represents adult defendants in felony and misdemeanor cases, children in delinquency and dependency cases, termination of parental rights, review hearings, truancy, guardianship and adoption cases. It also handles adult and juvenile appeals. Community Legal Services, a civil legal services program funded entirely by the City/County of Philadelphia, provides representation for parents in dependency and termination of parental rights cases.

Santa Clara County, California

Population: 1,647,419
Primary System: Public Defender
Primary Funding: County
Death Penalty: Yes

The County of Santa Clara completely funds the primary Public Defender and the Alternate Defender offices, which are county agencies. The public defender is appointed

“at will” by the County Board of Supervisors. These two offices do not handle appeals or dependency cases. The Sixth District Appellate Program handles felony appeals, state post-conviction and habeas corpus cases. Legal Aid/Conflicts Program is responsible not only for case conflicts with the defender offices, but also misdemeanor appeals and contempt cases. The Conflicts office pays contract attorneys on a fee for case basis with additional funds for motions and trial. The county contracts with a private program funded by the state through trial court funding for parental representation in dependency cases.

An analysis of the seven counties chosen as comparison sites shows that each site has a large primary public defender program. Dade County is a publicly elected system; Maricopa County, Orange County and Santa Clara County are established as separate county public defender departments; and Philadelphia, King and New York Counties are organized as private, non-profit corporations.

Because of the requirements of conflict of interest and case overload, at least one secondary organization must exist in each county. However, as the information set out above indicates, the various counties have chosen different methods for representation, including a separate public defender program, a private bar contract program, a court-appointed assigned counsel system and secondary private non-profit public defender.

The variation within these seven counties reflects similar decisions made by other counties around the country. Our long experience working with indigent defense systems around the country leads us to the conclusion that there is no one model that will assure both efficiency and effectiveness. No one size fits all.

Our experience further leads to the conclusion that neither cost per case nor cost per capita is a reliable measure of the relative quality or efficiency of programs within counties of comparable populations. Among the reasons that have led us to this conclusion are the following:

- There are several ways in which counties define a case. If those definitions are different, then the caseloads cannot be reliably compared.
- In some counties, public defenders are required to provide representation in several categories of cases not required in another county.
- The salaries of public defenders and support staff in different counties vary widely, making it difficult to compare overall expenditure.
- Some counties must rely entirely on county funds for public defense, while others receive substantial state funds, which will usually result in a higher total expenditure.
- Some counties have a large number of death penalty cases and other serious and complex cases, while others may have fewer of both.
- In some counties, court-appointed counsel are compensated at as much as twice the hourly rate of other counties.

Thus, TSG believes that without further study, including personal observations of the operation of various systems, one should not compare the caseload and cost of King County public defense to the other seven counties to determine issues of efficiency or effectiveness. TSG has prepared summary tables for informative purposes.

Table of Indigent Defense Caseloads in Comparable Counties

Counties by Size	Felony	Misd.	Juvenile	Probation	Appeals	Capital	Other	Total
Maricopa County, AZ	27,221	17,712	27,910	11,086	2,148	47	8,116	94,240
Orange County, CA	19,508	31,820	10,499	--	600	12	3,537	65,976
Kings County, NY	18,498	80,101	5,738	1,025	740	11	--	106,113
Dade County, FL	24,125	56,673	10,973	7,294	459	58	--	99,582
King County, WA	11,532	15,122	20,711	4,905	246	--	4,303	56,819
Santa Clara County, CA	10,259	8,734	10,976	7,200	738	7	1,747	39,661
New York County, NY	24,232	90,005	8,489	3,141	778	8	--	126,653
Philadelphia County, PA	28,173	35,854	14,204	5,890	622	72	8,922	93,737

Table of Indigent Defense Expenditures in Comparable Counties

Counties by Size	Caseload				Expenditure			
	PD	AC	Contract	Total	PD	AC	Contract	Total
Maricopa County, AZ	80,625	13,615	--	94,240	\$35,400,000	\$9,428,793	--	\$44,837,273
Orange County, CA	62,376	3,600	--	65,976	\$27,100,000	\$9,800,000	--	\$37,031,952
Kings County, NY	60,760	32,393	12,960	106,113	\$19,290,543	\$8,214,798	\$5,350,000	\$33,067,567
Dade County, FL	86,601	12,981	--	99,582	\$27,294,104	\$4,091,232	--	\$31,385,336
King County, WA	54,526	2,293	--	56,819	\$25,700,000	\$2,200,000	--	\$28,013,638
Santa Clara County, CA	34,067	2,894	2,700	39,661	\$22,850,000	\$2,004,275	--	\$24,933,597
New York County, NY	63,020	46,896	16,737	126,653	\$27,786,300	\$11,892,729	\$6,016,141	\$45,948,476
Philadelphia County, PA	76,198	17,539	--	93,737	\$21,000,000	\$7,835,711	--	\$29,023,185

Chapter Three – Findings and Recommendations

These findings and recommendations are based upon The Spangenberg Group’s work to date, including interviews with key stakeholders, discussions with agency management and staff, meetings with the Oversight Committee, review of secondary materials, and The Spangenberg Group’s experience in studying public defense systems throughout the country. Each finding and recommendation has been the subject of independent review and vigorous discussion by the Oversight Committee. At each stage, the Oversight Committee has considered the impact that any potential cost savings might have on the quality of indigent defense services, both in terms of efficiency and the need to maintain quality. The committee has also borne in mind that the existing public defense agencies have been providing the primary services from 12 to 30 years.

Examination of Alternative Models

The Oversight Committee considered a number of “alternative models” to the current King County Public Defender system. Those alternatives are set forth on page 86 of this report. Several of these options would eliminate the private non-profit public defender agencies and replace them with a county public defender office, in which attorneys and support staff would be county employees. In reviewing this option, the committee considered several methods of selecting the Chief Public Defender to administer the in-house agency. These methods included a separately elected public defender; appointment by the King County Executive or the Superior Court; or appointment by an independent commission of attorneys. All of these alternative plans for appointment assume the establishment of a primary in-house public defender.

The other options included: (1) maintaining the current structure of the OPD, except place the administration under the purview of a lawyer or former judge; (2) maintain the current structure, but determine whether more than four or less than four private, non-profit agencies would be more efficient and effective; and (3) to move away from contracting altogether by maintaining the OPD, but shifting contract funds into County FTE public defenders.

The Oversight Committee spent a substantial amount of time during several meetings discussing the options, narrowing the number to three and then reviewing detailed financial cost comparisons of the three alternatives with the current system. It also examined factors other than financial cost before making a final recommendation.

The initial discussion focused on two alternatives: either electing a public defender or moving the OPD out of the Executive Branch and into the Judicial Branch. Making the Director of the Office of Public Defense an elected position would establish the Office of Public Defense as an independent office on equal footing with other elected officials, such as the County Executive, the Prosecuting Attorney, the Sheriff and the County Council,. This possibility was raised by The Spangenberg Group and discussed by the Oversight Committee at an early meeting of the committee, when Mark Stephens, the elected Public Defender of Knox County, Tennessee was in attendance as part of The Spangenberg Group's site team. At that time, the Oversight Committee did not favor this approach, principally because of concerns that the OPD might be compromised by the political process.

A second alternative would be to move the Office of Public Defense out of the executive branch and into the judicial branch. This option was discussed by the

Oversight Committee, but little interest was generated in its favor. Several members of the Oversight Committee emphasized the need to maintain independence between the judicial branch and public defense. The concern is that, from time to time, appropriate actions by public defenders on behalf of their clients might not be looked upon favorably by certain judges and it might be difficult to resolve those differences while maintaining the responsibilities of both the judges and the public defenders. There was also concern about the fact that the judicial branch has a large budget and many different line items as part of that budget. If the judicial branch took on the additional responsibility of the budget for the public defender system, they might find themselves in conflict with the county at budget time, struggling to prioritize the public defense budget with the judicial budget. There are those who feel that this might create an unnecessary conflict or at least the potential for an appearance of a conflict of interest. There was also concern that if public defense needed additional funds in a given year, the judiciary might be required to make up the deficit out of other parts of the judicial budget. After some further discussion, the committee concluded that, for these and other reasons, it does not make sense to place the Office of Public Defense within the judicial branch.

A brief discussion was held regarding the option of maintaining the current structure, except to place the administration of the OPD under the purview of a lawyer or former judge, “who could more legitimately raise and pursue public defense issues during interagency planning efforts.” Members of the Committee pointed out that it was unlikely that simply placing a lawyer or former judge in charge of the OPD would resolve the issues raised in the RFP. OPD would still be under the authority of the Department of Community and Human Services, competing for funds and attention with

the other agencies in that Department. Thus, the Committee decided against this option. This portion of the discussion of alternative models, however, raised the issue of possibly elevating the OPD, perhaps with additional authority, to a higher position in county government.

Converting to One or More County Public Defense Agencies

As a result of these early discussions, the Oversight Committee decided to take a hard look at the option of converting the current system into one or more county public defender offices and to determine what role the OPD would play in such a system.

The Oversight Committee determined that in considering this substantial change, cost consideration should be examined carefully, as well as other non-cost considerations. Mr. Peter Moy was asked to conduct a financial cost analysis, comparing the costs of the current system with an in-house public defender system. In accordance with established practices around the country, such a system would likely consist of two public defender offices: a large “primary” public defender and a smaller “conflict” office, with a private assigned counsel system to handle the conflicts and overload of the two county offices.

In requesting the cost analysis, the Oversight Committee also asked Mr. Moy to estimate the cost of an elevated OPD with new functions which might stand alone under the current system or be incorporated into a new in-house system.

Finally, the Committee asked Mr. Moy to cost out a third system, which would call for the reduction of the four current non-profit public defenders to two, with an expanded private assigned counsel system.

The cost analysis conducted by Mr. Moy is set forth in detail in Appendix A of this report.

One of the major considerations concerning conversion to an in-house county public defender system is the potential financial costs or savings that might result if the present system were converted into one or more county public defender offices. The following discussion is an attempt to summarize the views and issues raised by the Oversight Committee, Mr. Peter Moy and members of The Spangenberg Group both regarding cost and non-cost issues in the in-house model.

There are several potential benefits to the county of bringing the entire public defense system “in house.” These include the following:

1. The county would likely obtain a more consistent and credible level of oversight and evaluation of the public defender system.
2. There would probably be fewer than four agencies (most likely one primary and one conflict office), meaning a more centralized “voice” to speak for public defense.
3. There might well be an opportunity to improve coordination and cooperation within the public defender community.
4. There would be some reduction in administrative staff, and thus reduced administrative costs due to centralization of services and economies of scale.
5. It would be easier to coordinate the management information systems and the case tracking systems.

There would also be a potential benefit to the employees of the existing agencies:

6. Employees of the existing agencies who become county employees working in one or the other of the county public defender offices would probably receive substantially increased salaries and benefits.

In contrast, there are a number of potential problems involving both cost and non-cost issues that might result from the elimination of the current non-profit system. These include the following:

1. If there were fewer than four “in house” agencies, there would likely be an increase in the private assigned counsel caseload because two offices would produce a larger conflict caseload than four. This raises questions of whether there are sufficient qualified private attorneys willing and able to come into the system at the current rate of \$33/hour to handle the increased caseload.⁴²
2. As county employees it would be necessary to raise the salaries, particularly of support staff, to meet the levels of the county personnel system.
3. There would also be a substantial increase in total cost for fringe benefits as county employees.
4. Eliminating the four non-profit agencies to create two in-house systems would require additional start-up costs.
5. There would clearly be a disruption of attorney-client relationships in many of the cases that were on-going at the time of the conversion.

6. The disruption could have a negative effect on the criminal justice system as a whole, and possibly create backlogs in disposing of criminal cases.
7. Assuming that not all of the employees of the four agencies would be asked to become county employees or would desire to become county employees, a substantial amount of time and money would have to be spent recruiting and hiring new personnel.
8. There would be certain costs that are difficult to define at this point, involving the winding-up of two or more agencies, including such things as buy-out of leases, disposal of equipment, pay-off of accrued vacation and health benefits and other union issues that might be effected.
9. There would also be a necessary period of transition from one organizational framework to another that would be difficult to accomplish, and would add some costs to the system for closing out cases for the existing contractors.
10. Because of the fact that the non-profit agencies have been in existence for 20-30 years, the closing down of these operations in favor of an in-house county agency could possibly cause political problems for the county.
11. And, finally, there are concerns about whether the independence and advocacy functions that are so highly valued and have existed for so many years might be diminished if the agencies were eliminated and the program became an in-house county agency.

⁴² Likewise, if the rate were to increase (it is now one of the lowest in the country), this would produce a

On balance, the Oversight Committee felt very strongly that the potential positive results are far outweighed by the substantial additional costs and other disrupted factors; therefore, the Oversight Committee recommends that the existing agencies remain as they are. This position was strongly supported by the Prosecuting Attorney's office. Having made this decision, the Oversight Committee returned to the earlier discussion of elevating the OPD in King County government.

Elevating the Office of Public Defense

There is a consensus among the Oversight Committee members and other key policy makers that the Office of Public Defense should be elevated to a higher level in county government.

The Office of Public Defense is presently a division within the Department of Community and Human Services. The Administrator of the Office of Public Defense, Mr. James C. Crane, reports to the Director of the Department of Community and Human Services, Ms. Barbara Gletne, whose other responsibilities include the departments of Community Services, Mental Health, and Developmental Disabilities.

After consideration of all the issues heretofore discussed, the Oversight Committee has reached a consensus opinion that the Office of Public Defense should be elevated within county government. One of the primary reasons for this decision is the need for a stronger policy voice on behalf of public defense. Along with the stronger voice, however, the Oversight Committee recommends that the Office of Public Defense have

proportionate increase in cost.

additional duties not presently carried out by OPD. The additional responsibilities include:

- Helping to obtain grant money;
- Training attorneys and support staff in all agencies and private court-appointed counsel;
- Developing appropriate standards and guidelines for qualification and performance of attorneys and paraprofessionals; and
- Helping to coordinate technology improvements.

All of these would add further accountability to the Office of Public Defense.

There is also a consensus that, once elevated, the Office of Public Defense should be administered by an attorney with prior experience in the criminal justice system. An attorney with prior experience in criminal law would be treated with more esteem by other system actors in policy-level forums. This is true both in terms of the OPD's relationship with other county offices as well as OPD's relationship to the public defense agencies themselves.

The Office of Public Defense Should Be Elevated Within the Executive Branch.

The alternative favored by the Oversight Committee is to establish the Office of Public Defense as a new department on an equal level as other King County Departments. In this case, the Office of Public Defense would remain part of the Executive Branch, but its Director would hold a department level position within the county government. The principle benefits of this approach would be to free the Office of Public Defense from the conflicting interests of the other agencies with which it now "competes" for the budget. Just as importantly, it would increase the political clout of the

Director of the Office of Public Defense and substantially improve “the voice” of the public defense function.

The Director of the Office of Public Defense should be Selected by a Public Defense Commission and be Given Additional Responsibilities

Assuming that the OPD would be repositioned structurally in the county government, the Oversight Committee has also considered how the Director of the Office of Public Defense should be selected. It is extremely important that the selection process be insulated from undue political pressures. One way to do that is to establish a Public Defense Commission, whose responsibilities include appointing the Director of the Office of Public Defense.⁴³ This could be done in different ways. One possibility is for the commission to submit the names of some number of nominees considered qualified for the position to the county executive, who then makes the final selection, with or without the advice and consent of the County Council. In this case, it was suggested that the term of the Director be established so that it is not coterminous with that of the appointing executive.

Another approach suggested is to give the commission the power to appoint a Director, a structure which is generally seen as better preserving the independence of the office. In this case, however, there should be a process of review that is sufficient to insure that the board maintains an active understanding of the Director’s performance. For example, the Director might be appointed for a term, at the expiration of which, the

⁴³ Commissions in most jurisdictions have additional responsibilities, too, such as establishing policies and standards for the indigent defense system, preparing an annual budget, setting compensation for court-appointed counsel, contracting with individual attorneys, engaging in public education and generating political support.

board conducts a performance evaluation of the current director. Alternatively, if the Director serves at the pleasure of the board, the board might conduct periodic performance evaluations.

There are also a variety of ways in which the commission members might be appointed. In most states, it is a representational effort, whereby the local legislative, executive and judicial branches, plus the local bar association, each appoint members. Other methods include: appointment by the County Executive, confirmation by the County Council; appointment by the court; appointment by the agencies; and inclusion of the dean(s) of a local law school. The terms may be staggered or coterminous.

In addition to appointment of the Director of the Office of Public Defense, the commission might be given other duties. As a general rule, these duties are at a policy level, while the implementation of those policies is left to the discretion of the Director.

The discussion surrounding the elevation of OPD in the county was debated at the last two meetings of the Oversight Committee and a recommended structure was designed. The recommendation for the first part of the structure was to elevate OPD to a department-level position with greater oversight and additional responsibilities than those currently available to OPD. After much discussion, there was an agreement that a commission should be made up of one individual appointed by the Mayor of Seattle, two individuals appointed by the County Executive and four individuals appointed by the King County Bar Association. Of these numbers, one should be a client, former client, or member of the client's family and one should be a retired judge. It was recommended that no active prosecutors, judges or public defenders should be appointed to the commission. The commission's first responsibility would be to recommend the names of

three qualified lawyers with criminal justice experience to the County Executive and the County Executive would appoint one of these individuals subject to County Council confirmation.

Once confirmed, the Director would have a number of responsibilities and have available to him or her the advisory committee to use as a sounding board to review periodic reports provided by the Director and be an educational and political force for the improvement and advocacy of public defender services, both within and outside county government. The clear feeling of the committee was that the Director should have primary responsibility for the functions designated to the office and the commission should serve in an important, but advisory, capacity. Members felt that in order to get a high-level group of commission members to agree to serve, they would have to feel that the time they put into the commission work would be important, significant and worthwhile.

It was also agreed that the Director should serve as all other department heads or agency directors on an at-will basis. The Oversight Committee felt that it was unlikely that any County Executive would terminate the Director of Public Defense who was doing a good job, was a strong advocate for indigent defense and had the support of the commission. It was also felt that if the position required a firing for cause, it might well require an amendment to the county charter. Everyone agreed that this should be avoided if possible.

After further discussion, it was agreed that the duties of the Director should include all of the following:

1. To facilitate inter-agency communication and cooperation. This was meant to mean facilitating cooperation among the four public defender agencies.
2. Coordinate the technology needs of the public defender agencies and OPD.
3. To develop standards and guidelines for public defender and assigned counsel operations, including performance standards, qualification standards and management standards.
4. To issue written policy regarding the handling of conflict of interest cases which would be published and uniformly required for all public defender agencies.
5. To assist in writing and obtaining grants for the public defender agencies.
6. To implement a case-weighting system.
7. To develop and coordinate the budgets for all of the agencies and the office of public defense.
8. Improve general contract monitoring and administration.
9. Convene regular meetings of the directors of the public defender agencies.
10. Serve on or appoint public defender personnel to all relevant criminal justice committees in the region.

The Oversight Committee is aware of the fact that these recommended management changes in the public defender system pose a substantial change in the system. However, the results of the current study, while validating the fact that the current program provides quality representation, also point to a number of improvements and cost savings that the committee believes can ultimately occur only with the proposed revisions to the structure of the Office of Public Defense. This is not simply a matter of “changing the management” to address the current problems. The current limitations

placed on the OPD by virtue of its place in the government structure make it doubtful that little more than minor progress could be made by anyone at the Office of Public Defense if that office's structural relationship to the rest of the criminal justice system remains unchanged.

The committee has serious reservations about the ability of anyone acting within the current structure to solve these issues and to restrain growth in the public defender budget over the next several years. The committee is hopeful that these changes can occur soon. In the meantime, the Oversight Committee will continue to function over the next few months to address this central recommendation and other recommendations continued in the balance of this report.

Reviewing the Case Credit System

The case credit system should be reviewed to assess its value both as a basis for budgeting and as a measure of the workload of the agencies.

The current case credit system has been in use for almost fifteen years. In conjunction with the caseload standards, it has attempted to serve both as a method of keeping workloads reasonable and as the primary measure by which agency budgets are determined each year. When created, the case credit system may have provided a reasonable method to both control caseloads and measure workloads. Since then, however, the case credit system has been modified only slightly. Meanwhile, criminal defense practice has changed dramatically, both substantively and procedurally. Myriad new laws and procedures have required King County to provide new and different public defense services and have altered the amount of time that is needed to provide competent

services in a variety of cases. For many years, case “credits” for these new and different services have been negotiated between the contractors and the Office of Public Defense in a way that does not reflect the actual time lawyers and support staff may need to resolve these cases.

In addition, the case credit system is cumbersome and confusing. One is easily confused by the statistical reports on cases and credits. Sometimes, data that purportedly refers to “cases” actually refers to “credits” and vice versa, indicating that even those who prepare the data have become confused. While those who work closely with the system purport to understand it, the level of comprehension drops precipitously as one moves outside the circle of the Office of Public Defense and agency management. This lack of understanding poses an unnecessary barrier to effective relations between the Office of Public Defense and other county agencies, especially the Office of Budget and Management.

The Oversight Committee recommends that the County undertake, as an alternative, a case-weighting system study. Furthermore, this study should include the prosecution function and the courts. In the past two decades, quantitative case-weighting studies using contemporary time sheets have become a standard tool for many court systems and prosecutor offices around the country as a method of measuring the average time needed to perform necessary legal tasks for various kinds of cases. Such measures are absolutely necessary not only to justify funding requests, but to permit funding authorities to plan for reasonable year to year appropriations. Beyond that, workload measures are an important tool for public defender managers to evaluate caseload trends and fluctuations affecting their programs, and as one part of an overall performance measurement of

individual attorney productivity. Such a study would also establish a common definition of a case, which is essential to a true comparison of workload among the three criminal court agencies.

In making this recommendation, the Oversight Committee is not suggesting that the County modify its caseload *standards*. Caseload standards are required by state law. The current caseload standards in use by King County are based on standards developed by the National Advisory Committee on Criminal Justice (NAC). The NAC standards, modified to fit local practice, are commonly used by public defense programs across the country and are a necessary part of any case weighting system. It is not the caseload standards that should be studied, but rather the methodology used to determine the average amount of time needed to perform necessary functions for various types of cases. A case-weighting method needs to replace the current case credit system.

Reducing Systemic Delays

The process of appointing counsel should be examined with a view towards providing meaningful representation to detained persons sooner, which would better serve clients and would likely reduce costs.

Many persons close to the early stages of the criminal justice process have expressed concern about the amount of time that passes before a detained person receives meaningful representation. The rules of criminal procedure require prompt hearings for detained persons. The present system affords those persons an attorney at the hearings. As a practical matter, however, too much time passes before a detained person has an opportunity to *meaningfully* discuss his or her case with an attorney. Many systemic

factors contribute to this delay, which is the result of a confluence of policy decisions by many different actors in the system. The result, however, is that the court is unable to make early decisions that could benefit the county, the detainee, and the community as a whole.

In this regard, the Oversight Committee is concerned primarily about the opportunity for the court to make a fully informed decision about the conditional release of persons arrested and detained for investigation. Under the current system, the Office of Public Defense enters into an agreement with one or more agencies to provide services as an “Attorney of the Day” (AOD) in various courts during the preliminary stages of a prosecution. In adult felony matters, e.g., The Defender Association provides the AOD for the “first appearance” calendar at the KCCF, while SCRAP provides this service at the RJC. Associated Counsel for the Accused and The Defender Association provide the AOD at arraignments.

At the “first appearance,” a person may be held “for investigation.” Under current practice, it is unlikely that such a person has been screened by the Office of Public Defense. Instead, the person will be represented by attorneys of the day until after arraignment, when the Office of Public Defense assigns an attorney to handle the remainder of the case. At these initial stages, there is little reason for the AODs to look beyond the narrow issues presented at the particular hearings at which they appear. Indeed, there is a significant *disincentive* for doing so, because the more the attorney learns about the case, the more likely he or she will later have a conflict of interest. In most cases, the AOD will not continue to represent the persons he or she represents at such a hearing and, in many instances, the case will be assigned to a different agency than

the agency for which the AOD works. Thus, the AOD is put in the difficult--some would say ethically ambiguous--position of having to say, "Don't tell me about... [the facts, the victim, witnesses, other actors]" at a time when those issues are most pressing on the client's mind. Likewise, important information may be lost because the case is assigned, ultimately, to another attorney (often in another agency) and no procedure exists to pass the information along with the client. In any event, an Attorney of the Day can almost guarantee the client that he or she will not be the client's attorney tomorrow, because even if the case is later assigned to the same agency, it will likely go to a different attorney within that agency.

This issue persists even after the first appearance when a detained person appears at arraignment. The consultants have observed felony arraignment sessions when persons were arraigned and the public defender assigned to the calendar had not interviewed them, did not have discovery, and could not confirm or deny the information provided by court services. The general practice at arraignment is to waive the opportunity for a bail hearing until a later date (perhaps a week or more) by which time the person's "real" attorney will have been assigned and that attorney will have had an opportunity to make an informed assessment of the opportunities for pretrial release. The principle reason AODs waive the bond hearing is because of a long-standing policy of the Superior Court to allow only one bail hearing.⁴⁴

⁴⁴ The policy of one bail hearing per defendant is long standing and has been enforced by all criminal presiding judges to one degree or another. The *rationale* for the rule is: because there is limited space on the bond calendar, those who have not had an opportunity to address the issue are afforded priority over those who have had an opportunity. It is important to note, however, that a second bond hearing may be allowed if there is some demonstrable change in circumstances. Of course, it can be difficult for an attorney to know exactly what happened at the arraignment (and, hence, what might constitute a changed

Because the AOD is typically (and understandably) unprepared to present a case for pre-trial release, it often makes sense to wait until another attorney has had sufficient opportunity to prepare the case for such an argument.

This is not an indictment of the individual attorneys who appear as “Attorney of the Day”. The use of an attorney of the day is a common practice in other jurisdictions and it has its advantages. For example, some cases may be dismissed at the first appearance for lack of evidence or by the exercise of prosecutorial discretion. Likewise, a number of the cases that proceed farther are simple matters that could have been disposed of quickly. Conceptually, it makes sense for such matters to be resolved by a single attorney without investing a great deal of time or resources. Such a system works best, however, when the Attorney of the Day is part of the same agency to which the case will ultimately be assigned. The fact that King County has four different agencies, three of which provide AOD services in different courts, opens the door for the inefficiencies noted above.

This problem may be improved only with the cooperation of several system actors, including the prosecution offices, the Office of Public Defense, Court Services, and the Court. A process should be devised whereby an attorney is appointed at the early stages who has both the time and the resources to make a reasonable case for pretrial release or early disposition of a matter. If, for example, the Attorney of the Day were able to go to the jail early on the day of first appearance and spend time interviewing clients, the AOD could make better judgments as to which persons had a reasonable

circumstance) because it is usually the AOD, not the attorney of record, who appears at arraignment. In any event, the *possibility* of a second hearing based on changed circumstances does little to alleviate the pressure on the AOD to waive the hearing at arraignment

chance of obtaining pretrial release. The AOD would need access to records, a phone, and a paralegal or other support person to be able to contact a detainee's relatives, employers, and others who could verify information that may go "unverified" under the present system. To cut down on potential conflicts, each agency should be providing an AOD at the first appearance (they might rotate, with a different agency providing an attorney for one week each month). Absent a conflict, cases should be assigned to the same agency that provides the AOD (it might go to a different attorney within the agency) for the duration of the case. As for the prosecution, earlier delivery of discoverable information would assist in the process (discovery is routinely made available at arraignment in "Fast-track" drug cases) as would the assignment of a prosecutor with authority to dispose of minor cases at these early stages. The court must be willing to commit more time to bond matters early in the case. And, because more persons would be put on pretrial supervision, Court Services must be able to provide more supervision services. Without these changes, however, there will continue to be a substantial risk that a significant number of arrested persons who will ultimately be released will be detained longer than necessary. If so, the system may be preventing the court from implementing conditions of release at an earlier time, which increases the cost to the county for pretrial detention and wastes the time and resources of the court, the prosecution and public defense.

Improving the Public Defense Voice

A strong policy voice on behalf of the public defender system in King County is critical to improve the overall system of criminal justice in King County.

The consultants have heard a wide variety of possible reasons why a strong, unified voice does not exist. It may be that the public defender community is not aware of the existence of a committee or task force that is considering a particular criminal justice policy. It may be that the organizers of policy discussions don't invite the correct representatives or mistakenly assume that the person they have invited has authority to speak on behalf of the other agencies. The agency directors circulated a plan at the March 2, 2000 meeting of the Oversight Committee to address this issue. This plan has not yet yielded satisfactory results. The public defender system owes a duty to its clients, the criminal justice system, and the taxpayers of the county to agree upon a new method as soon as possible.

Using Technology

King County should better use its indigent defense technology capability to maximize cost efficiencies and to give uniformity to its case tracking and data reporting.

Technological advances over the last several years are allowing jurisdictions across the country to improve their data reporting and save money by ending duplicative data entry procedures. Any future plans for indigent defense technology improvements in King County should be carefully planned to include the software and hardware necessary to communicate effectively among the various data collectives, to reflect current case information, and to minimize data entry repetition. Towards this end, King County is currently developing closer integration of data between agencies. The Law, Safety and Justice Integration project (LSJI) envisions coordination between all of the participants in the criminal justice system.

It is vital to the success of any justice integration technology plan to design the system with the specific needs of each of the agencies in mind. Unfortunately, neither OPD nor any of the public defender agencies appears ready to implement this technology and their participation in the development and design of the entire system has been minimal. Moreover, some indigent defense agencies are currently proceeding with case management software upgrades without sufficiently considering their compatibility with the LSJI project.

OPD and the various public defenders have disparate and incompatible Case Management Systems (CMS). A good CMS should, at a minimum, allow easy access to case information for both litigation support and statistical analysis.⁴⁵ To do this, a CMS should be designed around an 'open architecture' rather than a 'proprietary' database. An open architecture database allows the user to retrieve data from the system without the intervention of a programmer by allowing commercially available programs to access the information either directly or through readily available open database connectivity (ODBC) programs.

Although it is possible to share information using proprietary systems, it is necessary for each system to export the information to a format that can be understood by the other application, then import the information to the other system. Proprietary databases are inaccessible by other programs that might be used to analyze or share the data. The Office of Public Defense currently uses a proprietary database to export

⁴⁵ An example of litigation support is an attorney accessing information about a particular client in order to generate documents without having to retype information. An example of statistical analysis is a report that generates a snapshot of the number of days to disposition of a particular type of case for all attorneys in an agency.

information on case assignments to the defender agencies. This process is time consuming, prone to errors and prevents the systems from communicating in real time.

From a technology standpoint, the easiest system to develop and maintain is a centralized CMS at the OPD, accessible by each of the agencies. This would reduce the need for data entry at each of the defender associations, would ensure consistency in information tracking and reporting capabilities, and reduce costs. Accurate codefendant, witness and associated information would enable OPD to perform rudimentary conflict checking before a case is assigned to an agency. Alternatively, each agency should have a CMS capable of tracking case information beyond the assignment of the case, which would allow the agencies to analyze workload and disposition information, spot scheduling conflicts and identify systemic bottlenecks that hinder the administration of justice in King County.

In addition, a case management system should be designed to make use of case and client information provided by the court information systems. The courts track this information in the normal course of business; maximizing the use of existing data would ensure consistency of information between the various elements of the criminal justice system.⁴⁶ In a fully integrated case management system, the public defenders' systems

⁴⁶ As an exercise in assessing the capacity of the courts to provide case disposition information, The Spangenberg Group submitted a request to the Superior Court to obtain detailed information about all cases disposed of by each of the public defender agencies in CY 1999. The Spangenberg Group submitted a list of bar numbers for the attorneys in each agency to the Superior Court. The Court ran a query against these numbers to produce a picture of disposition information, including trial rates, duration of cases by type of case, and number of hours spent in trial or hearing. The query designed to gather this information could be run on a regular basis with very little work. Similar queries can be used to keep the OPD system up to date with relevant and accurate disposition information, eliminating the need to reenter data at the agency level. It appears that the same type of information could be gathered from the District and Municipal Courts.

would access the Court Information Systems directly, and any updated information related to a particular case or client would be immediately available to the user.

The public defender agencies and the Office of Public Defense should create interagency technology groups to help integrate technology and educate users.

A critical aspect in the design and implementation of any computer system or software component is input from the end users. This is not always an easy task because users are often unaware of the capacity of the systems to provide useful information or how that information can maximize efficiency. Information personnel, on the other hand, are often unable to describe what functions are available to the users.

Sharing technology information or designating one person from OPD to be the technology implementation “guru” would advance the systems functionality at a reduced overall cost.

One option is to assign an individual from the OPD to implement the best technology solutions at each of the agencies and make recommendations for transition to an updated and integrated system. This individual could implement the electronic case assignment information for each of the agencies.

Another option is to have regular meetings of technology staff from among the public defender agencies to share information and solutions. There are many levels at which such user groups can be helpful. In designing desktop applications or automated procedures in word processors, for example, it is important for designers to be aware of what processes are used repeatedly in order to design useful automation. At the level of a case management system, it is important to know what elements of information will be

used by which users, which elements need to be secured against viewing or changes by various users and how users might want to analyze or make use of existing information.

Coordination and Communication Among the Four Agencies

During site visits, The Spangenberg Group observed several meetings involving the directors of the four agencies, and in some cases, their deputy directors. One of the concerns that The Spangenberg Group has with the management of four separate and independent agencies is that this approach does not necessarily lead to overall coordination in the delivery of high quality legal services. Each agency has a different philosophy of how its organization should be managed in terms of staffing, overhead, and delivery of services. The Spangenberg Group supports this philosophy and the independence it fosters. Within the organizational framework, however, there should be more communication, coordination and contact among the agencies. Some suggestions include the possibility of joint training, interagency committees in areas such as social work, investigation and BECCA. It may be helpful to have coordination and communication exist below the director level, periodically, and to include members of the boards of directors of the four agencies, the deputy directors, case supervisors, etc. Also, it might be efficient and good policy to conduct joint training programs for the four agencies. All of these ideas or policies may lead to a stronger, more forceful public defender community and an opportunity for the sharing of unique ideas and new ways of providing services among employees of the various agencies.

Chapter Four-- Implementation of Short-Term Tasks

Although the Oversight Committee strongly recommends the elevation of the Office of Public Defense to a county-level department headed by an attorney with criminal law experience, it will take some time to implement such a recommendation, if followed. In the meantime, there are a number of important tasks that could be taken, which would improve the public defense system and the overall criminal justice system in King County.

The Committee is prepared to continue working with county government officials, the Office of Public Defense, the Public Defense Agencies and other criminal justice organizations over the next several months to achieve these goals. The committee believes that it is possible to improve the quality of representation and, in some instances, to save the county money by continuing its work. The committee has selected four areas in which the committee will continue its work. In establishing priorities for these short-term issues, the Oversight Committee has given greater weight to those tasks that represent real opportunities to begin saving money in the next two to three months.

Conflicts of Interest

The Committee will work to develop a comprehensive written policy concerning conflict of interest in public defense cases.

The Office of Public Defense currently has no comprehensive written policy concerning conflicts of interest in public defense cases. Thus, the agencies are left to make their own determinations as to which cases present a conflict of interest. There is little review of these decisions by the Office of Public Defense. This committee's study

suggests that five to six percent of all cases that are eligible for public defense services are ultimately determined to present a conflict in all four non-profit agencies, meaning that the cases are assigned to private counsel. Significant amounts of time and money may be spent assigning and re-assigning these cases. And, cases that are handled by private assigned counsel cost significantly more, per case, than cases handled by the public defense agencies.

A written policy regarding conflicts needs to be developed and consistently applied within the entire public defense agencies. Similarly, the Office of Public Defense needs a process by which it can review the assertions of conflict without violating client confidentiality. This task has a clear potential for cost savings.

Indigency Screening Standards

The committee will review the standards that are used to determine indigency.

In 1999, the Office of Public Defense screened about 39,000 persons. More than ninety-seven percent of those persons were deemed eligible for public defense services. It appears that a substantial number of persons are never screened because they are in custody (and, therefore, presumed to be indigent) or because they are juveniles. The Office of Public Defense re-screens some persons every ninety days and conducts a very limited investigation to verify the information supplied by persons who are screened.

In addition to the question of whether a person is “indigent” as measured by several standards, Washington State law requires appointment of counsel for a person who is not “indigent” by those standards, but who nevertheless is unable to afford the

additional costs of retained counsel. The Office of Public Defense was unable to determine how many persons are deemed eligible solely because of this last criterion, but it appears that the number may be significant. The Oversight Committee will review the indigency screening process at OPD and suggest any possible modifications that might result in cost savings without denying the right to counsel for those who are truly indigent.

Improving the Initial Stages of the Criminal Justice Process

The committee will work to develop procedures that ensure that, at the early hearings in a case, attorneys and the court have more information and an expectation of an outcome that will advance the case process.

The committee's study has documented the fact that under the current method of processing cases, particularly adult cases involving persons in custody, too much time passes before the courts, prosecuting attorney and public defender have sufficient resources to adequately process the cases in a fair and adequate manner. The Spangenberg Group has reported that a number of other large, urban jurisdictions are substantially ahead of King County in this regard.

Part of the problem relates to the unavailability of reliable computerized case data. Part of the problem has been the lack of joint planning and cooperation between the various criminal justice agencies. While additional funds may well be needed, the Oversight Committee intends to meet with all criminal justice agencies in King County to gain a better understanding of the problems and issues in order to recommend concrete ways to improve the quality of justice and to be more efficient.

Among the issues the committee intends to address are: the assignment of the public defender agencies; earlier bail determinations; diversion; giving more discretion to prosecutors and public defenders at the early stages of a case; improving the flow of paper and the exchange of non-confidential data among the criminal court agencies; and early disposition of cases; and bail policies and practices that could result in earlier release of those persons who are not a threat to the community.

Making Low Cost Improvements to Existing Technological Systems

The committee has identified several low-cost improvements to existing technological systems that could dramatically improve information resources and accuracy of data, while reducing the time and expense of entering that data. The projects include: (1) upgrade a few pieces of hardware to handle existing and developing case management systems at the public defense agencies; (2) implement existing data transfer routines so that the agencies can import assignments electronically from the OPD; (3) develop reports and analytical tools to use the information existing in OPD's case management system to better evaluate existing data; and (4) develop an interface to import court case information into the OPD case management system.

Remaining Issues

The committee recognizes the following issues as areas in which further improvements may be made:

- **Projecting Caseload.** The Spangenberg Group has raised several concerns regarding the method used by the Office of Public Defense to project caseload on both an annual and ongoing basis. In King County, caseload projections drive the

entire budgeting process. In the first half of 2000, the Office of Public Defense requested a supplemental appropriation of about \$2.6 million, mostly because felony caseloads in 2000 were reported to be higher than the projections upon which the 2000 budget was based. The Oversight Committee will review the current methodology used by the Office of Public Defense, the prosecution and the courts to project caseloads to develop a uniform method of projections which could apply to the courts, the prosecution and public defense.

- Cooperation among the Criminal Justice Agencies. The Spangenberg Group has informed the committee that, during the course of their work, they were encouraged by the interest and willingness of the various criminal justice agencies in King County to work more closely together to improve the quality of justice, to be more cost-effective and to develop cooperative methods to improve the flow of cases through the criminal justice system. The Oversight Committee also recognized this level of cooperation during its meetings over the past five months. Of particular note is the cooperative effort by the public defense agencies and the prosecuting attorney's office concerning the handling of charges of Driving with License Suspended. The Oversight Committee intends to explore other cooperative efforts over the next few months that could lead to similar cost savings.

- Cooperation and Coordination between the Public Defender Agencies. During the course of the study, it appeared that most of the corporate communication among the four agencies occurs at the directors' level. There is a real opportunity to develop better plans of cooperation among other individuals in the agencies, including deputy directors, supervisors, experts in substantive areas, investigators, social workers, and

members of the nonprofit boards of directors. All of this cooperation and communication should take place for the betterment of the overall defense system and for the clients for whom all the agencies are responsible. The Oversight Committee intends to explore this effort with the cooperation of the agencies and the Office of Public Defense.

- Improving the Policy Voice of Public Defense. There seems to be a clear difference of opinion between key officials in county government and some criminal justice agency leaders regarding whether or not the public defender system as a whole currently can speak as a strong voice on behalf of indigent defendants. The agencies on the one hand say that they are not invited to some committees or that things occur without their notice or participation. Yet the plan that they have devised falls short of assuring a strong public defender voice at all levels of government in the criminal justice system in King County. The committee (or a subcommittee) intends to work with the agencies and the county to try to help them better understand how a strong public defense voice can be heard in our criminal justice system and to assure that it is heard in all future planning committees and organizational structures.

- The Office of Public Defense and the Monitoring of the Agencies. The contracts between the Office of Public Defense and the agencies are over fifty pages long, are extremely cumbersome and complex, and have many reporting requirements which, by their nature, impose a heavy burden on both the Office of Public Defense and the agencies. Consequently, some of the reporting requirements are not fulfilled; others are met only marginally and still others are unnecessary. With the help of the County, the Office of Public Defense and the agencies, the Oversight Committee will

review the current contract, not with the goal of rewriting it, but simply to eliminate extraneous material and to identify the most important and reasonable requirements.

- Reviewing the Case Credit System and Workload Measures. The Oversight Committee is convinced that the current case credit system does not accurately reflect the average amount of time needed by public defense attorneys to perform the tasks required in the various types of cases for which public defenders are appointed. The consensus of the committee has been not to attempt to review the case credit system by making minor adjustments here and there. Rather, the committee supports an effort to develop a true case-weighting system to replace the case credit model. The committee also supports the idea of conducting a joint case-weighting study that includes not only the public defense agencies, but also the prosecuting attorney's office and the courts. Such a study would take the better part of a year, so the study should be conducted to allow the results to be used to form the basis of the next biennial contract between the Office of Public Defense and the agencies, in fiscal year 2002. The committee regards this project as a high priority, along with the elevation of the Office of Public Defense to a county-level department.

Appendix A – Cost Analysis

As part of the discussion concerning the need and value of any change to the current system, the Oversight Committee has compared the cost of the current system with the cost of three alternative systems. The analysis of the costs of the various alternatives is based upon a number of assumptions, discussed below. The foundation of this analysis, however, is the current budget, personnel, and caseload data provided by the Office of Public Defense and by each of the non-profit public defense agencies. The costs of the existing system can be summarized as provided in the accompanying chart.

2000 OPD Budget Adjusted	
Adopted 2000 Budget	
Current Expense	\$22,427,706
Criminal Justice	\$5,415,606
Grants	\$57,600
<i>Adopted Total</i>	<i>\$27,900,912</i>
OPD Adjustments	
Add: 2% Salary Increase	\$17,190
Add: Dependency Funding	\$1,974,637
Grand Total	\$29,892,739

Note that the OPD budget figures provided to the consultants did not include the cost of dependency cases from April 2000 to December 2000. The agency budgets for FY 2000, however, already include staff to work on dependency cases for the entire year. Thus, it was assumed that funding will be provided for the entire year and that the additional amount will be added to the Office of Public Defense’s 2000 budget. The Budget Office estimates that an additional \$1,974,637 is needed to fund these cases for the entire year.

Three Alternative Models

The Oversight Committee considered projected costs for three different organizational models. Model One maintains the current system organization, with the Office of Public Defense and four non-profit, private agencies. In this model, however, The Office of Public Defense is placed at a higher level within King County government and additional, higher-level administrative staff is added. The elevated OPD would have additional responsibilities, including: helping to obtain grant money; training attorneys and support staff in all agencies and private court-appointed counsel; developing appropriate standards and guidelines for qualification and performance of attorneys and paraprofessionals; and helping to coordinate technology improvements. All of these would add further accountability to the Office of Public Defense. The financial costs of Model One are summarized in the accompanying chart.

Model One	
An Elevated OPD	
Add Six Positions	
Higher Level Director	\$142,578
Chief Deputy (Training)	\$106,653
Grants Coordinator	\$56,192
Office Assistant II	\$30,012
Computer Resource Mgr.	\$68,121
Systems Analyst	\$56,192
Added Salaries & Benefits	\$359,874
Added Overhead	\$70,000
New OPD Budget	\$30,322,613
One Time Capital Cost	\$26,300

Model Two represents the conversion of the current system into an “in-house” county public defender, with two King County governmental agencies -- a primary public defense agency (which includes the current OPD functions) and another agency to handle conflict cases. In projecting the cost of two county agencies, the six higher level administrative staff salaries and benefits that would apply if the OPD were “elevated”, are not included. It may be, however, that if the county created “in-house” agencies,

some of the functions of the higher level OPD (e.g. computer resource manager) would be necessary and appropriate. If so, these costs would be additional. Whether or not the “elevated OPD” functions were included in an “in-house” system, Model Two would require a significant administrative reorganization, retaining some existing positions and adding some new positions for the “primary” public defense agency. New positions would be established for the “conflict” agency, also. The projected costs of a Model Two Scenario are summarized in the accompanying chart.

Some existing administrative positions might not be needed in Model Two. For example, because accounting and financial management might be centralized within King County government, some of the existing accounting and bookkeeping positions in the non-profit administrations could probably be eliminated. Presently, the OPD handles these functions for itself.

On the other hand, because the size and scope of the primary public defense agency is significantly larger than any of the existing

Model Two	
Convert to Two County Agencies	
Primary County Agency	
Salaries & Benefits	\$15,512,327
Overhead Costs	\$2,447,742
<i>Total</i>	<i>\$17,960,069</i>
One Time Capital Cost	\$895,260
County Conflict Agency	
Salaries & Benefits	\$6,660,180
Overhead Costs	\$1,069,683
<i>Total</i>	<i>\$7,729,863</i>
One Time Capital Cost	\$392,489
Kent Offices Administration	
Salaries & Benefits	\$348,362
Overhead Costs	\$58,600
<i>Total</i>	<i>\$406,962</i>
One Time Capital Cost	\$23,863
Assigned Counsel Costs	\$4,031,276
Remaining OPD Costs	\$3,260,383
<i>Total Operating</i>	<i>\$33,388,553</i>
<i>Total One Time Capital Costs</i>	<i>\$1,311,611</i>

agencies, another layer of management (e.g., a Chief Deputy) has been projected.

In Model Two, a higher proportion of cases would be given to private assigned counsel. Although the Office of Public Defense has provided a report on the number of assigned counsel cases, there is some concern about the reliability of that report. Based on the reported practices, it appears that these cases presented a conflict for all four non-profit agencies, but this could not be verified. It thus appears that the current rate of conflict among the four agencies is about six percent overall. The committee has, therefore, assumed a twelve percent conflict rate, if the system were to convert from four agencies to only two agencies. Because of the lack of reliable data, these projections should be considered planning estimates only.

To determine the cost of assigned counsel cases, a cost per case was calculated by dividing the total number of assigned counsel cases reported by the Office of Public Defense for 1999 by the estimated FY 2000 budget for assigned counsel by type of case. Again, the reliability of the conflict case number is in question and may distort the cost per case figures on assigned counsel. Another factor – not considered here – is the impact of any increase in the rate of compensation paid to assigned counsel.⁴⁷ If the reimbursement rate for assigned counsel increases, the cost per case would increase accordingly and the total cost of assigned counsel cases would increase in proportion to the increased number of conflict cases.

Model Two is projected using comparable salaries from the prosecuting attorney pay scale. The prosecuting attorney's pay scale for senior attorneys has four categories,

while the non-profit public defense agencies use only three senior attorney categories. In these projections, the highest prosecuting attorney category is matched to the highest public defender category.

In Model Two, the salaries used for the support staff are based on the Office of Public Defense's 1998 comparative study and current King County pay scales. Comparable positions in the Prosecuting Attorney's Office were used only if there were no comparable positions in the general County classifications. The consultants found no comparable County positions for supervisors of social workers and investigators, so they have used a pay range that is four ranges higher than the social worker and investigator ranges.⁴⁸ Because a few non-legal staff salaries in the current agencies are higher than comparable County positions, the 2000 earnings were used only as a base. For example, if the first salary step of a comparable position is less than what a staff member is currently making, the existing earnings were used in the calculations.

⁴⁷ Recently, a task force of the King County Bar Association recommended an increase in the rates. The Spangenberg Group reports that the King County rates are currently among the lowest of the large urban counties around the country.

⁴⁸ The Oversight Committee is aware of current issues concerning support staff salaries and benefits, especially concerning agency social worker and investigator positions. Some progress has been made in this area recently. Nevertheless, the use of a particular scale at this point should not be seen as an endorsement of any particular schedule, but merely as a method of estimating costs on a rational basis. The Oversight Committee did not reach the issue of appropriate support staff salaries.

In addition, when projecting costs for converting to in-house agencies, the current county benefit costs were used to calculate the benefits for each attorney and support position.

Model Three is essentially the same as the second model, except the two agencies remain non-profit community agencies rather than becoming King County government agencies.

The major difference is in salaries and benefits.

In Model Three, current salaries are retained, significantly reducing the overall cost, as compared to an “in-house” system at the prosecuting attorney scale. Benefits were projected by using the percentage of total benefits to total FY 2000 salaries for all the agencies. That average benefit rate was 19.2%.

For part-time staff the projected amount of benefits is based on the percentage of time worked. In addition, as with Model Two, the assigned counsel caseload and overhead costs are estimated to double.

Overhead Costs

The costs to maintain and operate Models

Model Three	
Contract with Two Agencies	
Primary Non-Profit	
Salaries & Benefits	\$13,863,492
Overhead Costs	\$2,442,742
<i>Total</i>	<i>\$16,306,234</i>
One Time Capital Cost	\$0
<hr/>	
Conflict Non-Profit	
Salaries & Benefits	\$5,933,074
Overhead Costs	\$1,069,683
<i>Total</i>	<i>\$7,002,757</i>
One Time Capital Cost	\$0
<hr/>	
Kent Offices Administration	
Salaries & Benefits	\$328,610
Overhead Costs	\$58,600
<i>Total</i>	<i>\$387,210</i>
One Time Capital Cost	\$0
<hr/>	
Assigned Counsel Costs	\$4,031,276
Remaining OPD Costs	\$3,260,383
<i>Total Operating</i>	<i>\$31,218,183</i>
<i>Total One-Time Cap. Costs</i>	<i>\$0</i>

Two and Three are based on the combined overhead budgets of the four agencies and the Office of Public Defense's administrative budget. Each agency's overhead budget has been allocated by type of case to determine the overall overhead costs per type of case.⁴⁹ Each agency's overhead budget has been allocated based on the proportion of attorneys for each case type to the total number of agency attorneys. The amount of overhead costs allocated for each type of case in the alternative scenarios is based on the percentage of the cases handled by each agency. For example, if the "primary" public defense agency took 67% of the felony cases, 67% of the felony overhead costs are allocated to the primary agency while 33% would be allocated to the conflict agency.

A Model Two scenario (in-house agencies) would mean that some costs would be eliminated or changed. We have assumed that King County would provide administrative support through inter-departmental services. However, the county would likely charge the costs of these services to the in-house public defense agencies. Such services include information systems support, motor pool, facilities, accounting, and financial management. Costs for supporting the current agency boards might be eliminated, and accounting, auditing, and general insurance costs might no longer be necessary. We have assumed, however, that a budget for professional liability insurance will still be needed. Although County costs may replace some of the current agency costs, these types of costs are currently unknown, so we have assumed that they would be the same as the current costs in the overhead totals.

⁴⁹ The specific overhead cost by line item varies by agency.

The largest overhead cost is rent for office space. The four agencies occupy separate office space, and rent represents about 50% of the total overhead costs for the agencies. We have included the agency rents as part of our overhead base. Even if the public defense agencies are part of King County government, office rent will still be necessary. With three of the four agencies located close to the King County Courthouse, the rents probably reflect the general rents in the area.

Although rental cost is included as noted above, future rent obligations pose a potential one-time cost if the public defense agencies were to become county agencies. The three downtown agencies signed new leases within the past couple of years and buying out these leases could pose a significant cost. For example, one agency estimated that a buyout of its lease would cost \$1.2 million. If the county chose to relocate the in-house agencies in Model Two, it may have to locate new space and pay off the existing leases held by the non-profit agencies. These costs are not included in the estimates and would have to be estimated if this option is pursued further. Similarly, other one-time costs such as vacation and sick leave payoffs, if any, disposition of agency assets, and other one-time close-out costs for the agencies are not included. Based upon other work The Spangenberg Group has done around the county, the Oversight Committee has concluded that there would also be additional, necessary transition costs.

Another one-time cost that has been added to support the County alternatives is the purchasing of furniture and equipment for all the employees. For attorneys, the one-time capital cost is \$3,400, and for non-legal staff the amount is \$4,875.

Basic Assumptions

There are a several overall assumptions that were used in developing estimates of the fiscal costs of the various alternative public defense systems.

- We have assumed a 2% cost of living increase for FY 2000.⁵⁰ The agency contracts for 2000 include a 2% cost of living increase as well as partial funding (\$99,000.00) for non-legal staff pay parity. We have assumed a 2% (\$17,190) increase in the Office of Public Defense's 2000 salary and related benefit costs.
- We have not projected beyond one year on the assumption that future differences would be limited to differences in the cost of living and any additional payments from the current system for salary parity for non-legal staff. Operating costs, however, are separately identified from one-time costs. As discussed below, there may be additional one-time costs (e.g., lease buyouts) associated with changing from the current non-profit system to a county government system.
- In calculating the costs of new agencies, we considered the proportion of each type of case that will be divided among the agencies and assigned counsel. As a base, we use the total cost of all four non-profit agencies providing services by type of case. Because administrative staff and costs are less dependent on the number and types of cases, these costs are first subtracted from the base, then calculated separately, and added back in to the total costs of the new agencies.

⁵⁰ The 2% cost of living figure was used to calculate all of the appointed costs in this section of the report. Recently, TSG was informed that the figure should be 2.52%, rather than 2%. In the interest of time, TSG has not re-figured the cost estimate based upon the new 2.52% figure.

- We have assumed no substantial changes to the attorney workloads or the ratio of support staff to attorneys and, thus, are carrying over the current number of attorney and non-legal staff positions (although they may be divided in different agencies). For purposes of estimating caseload/credit for the new agencies, we have assumed the FY 2000 case/credit figures set out in the FY 2000 proposed agency budget, plus estimated assigned counsel cases. We assume that the number of staff will change depending on the percentage of cases that are ultimately given to assigned counsel. For example, if a new system resulted in ten percent more cases going to assigned counsel than do presently, then we would reduce the total staff at the agencies accordingly. As noted below, however, the decreased staffing and overhead costs are probably offset by an increase in the total cost of the assigned counsel budget.

Summary of Cost Comparisons

Based on the costs calculated for the various alternatives and scenarios, maintaining non-profit agencies for public defense would be less expensive than making the agencies part of King County government. The major contributing factors to the different costs are salary parity, benefit costs, transition costs and added assigned counsel costs. If the County continues to move toward improving salaries and benefits, the cost differences between the alternatives will decrease. The following points highlight the impact that salary parity, benefits, and assigned counsel costs have on the overall costs.

- Compared to the public defender salary schedule, the Prosecuting Attorney's pay schedule for Deputy Prosecuting Attorney III through V is significantly higher for the equivalent Public Defense Attorney II through IV. The salary differences range

from \$4,300 to as high as \$7,570 annually. The differences involving all the other categories and steps are between \$160 to \$468 per year.

- For the non-legal staff, salary parity also increases the salary and benefit costs considerably. The difference between the total salaries based on existing 2000 earnings compared to the total salaries with parity is about 9.6%.
- The benefit costs are also considerably higher when the staff become County employees. As noted previously, the average benefit costs for the four agencies is about 19%. For attorneys as County employees, the benefits represent about 22% of the salary costs, while for non-legal staff the percentage is about 30%.
- The use of assigned counsel can also increase the cost of alternatives. For several types of cases, using agency staff is considerably less expensive per case than using assigned counsel.
- Consolidation of four agencies to two agencies slightly reduces the administrative positions associated with operating the four agencies. No accountants or bookkeepers are needed because of the County's centralization of such services, but the potential County costs or charges for performing these services are currently unknown. Despite the reduction in the number of agency directors and assistant directors, these positions are offset by the addition of chief deputies to manage a larger staff at one agency. Overall, any administrative staff savings are offset by the larger impacts of salary parity and increased benefit cost.