



INFORMATIONAL MEMORANDUM

TO: Community Services and Safety Committee

FROM: David Cline, City Administrator

CC: Mayor Ekberg

DATE: May 11, 2021

SUBJECT: Prosecution and Public Defense Services

ISSUE

During the 2021-2022 budget process and review of 2021-2022 contract for services, Councilmembers requested a presentation from the contractors that provide the City with Prosecution Services and Public Defense Services.

BACKGROUND

Prosecution Services – Planned for May 17, 2021 Committee Discussion

The Walls Law Firm has provided Prosecution Services to the City of Tukwila for many years, as a subcontractor for the Kenyon Disend law firm. In mid-2018 when Kenyon Disend discontinued providing Prosecution Services, the City contracted directly with the Walls Law Firm for the remainder of 2018 and then conducted a Request for Qualifications process from which the Walls Law Firm was selected to continue providing Prosecution Services from 2019 to the present. The contract for Prosecution Services runs concurrent with the biennial budget.

Public Defense Services – Planned for June 7, 2021 Committee Discussion

Kirshenbaum & Goss has provided Public Defense Services to the City of Tukwila for many years. Significant changes have been made to the program as Public Defense Standards were adopted by the Washington State Supreme Court effective January 1, 2015, which delineate the number of cases each attorney can handle per year and mandates that compensation include administrative and training costs. In addition to the Public Defense Standards the federal court decision, *Wilbur v. Mt. Vernon* also mandated substantial changes with new reporting and monitoring requirements. Beginning in 2013 the City has applied for and been awarded grant funds from the Washington State Office of Public Defense. These funds have allowed the City to provide interpreter services for attorney-client appointments, an investigator to gather case information, and a social services liaison to assist clients in connecting with services. The contract for Public Defense Services also runs concurrent with the biennial budget.

DISCUSSION

The May 17 presentation will walk through the process taken from the point of police contact with an individual to the conclusion of prosecution outlining the various options and outcomes throughout the process. The June 7 presentation will walk through the process taken from when public defense becomes involved in a case to the conclusion.

RECOMMENDATION

Information Only

ATTACHMENTS

PowerPoint Presentation
Prosecution Questions and Responses

Law Enforcement Process Prior to Prosecution



Eric Drever

Chief of Police

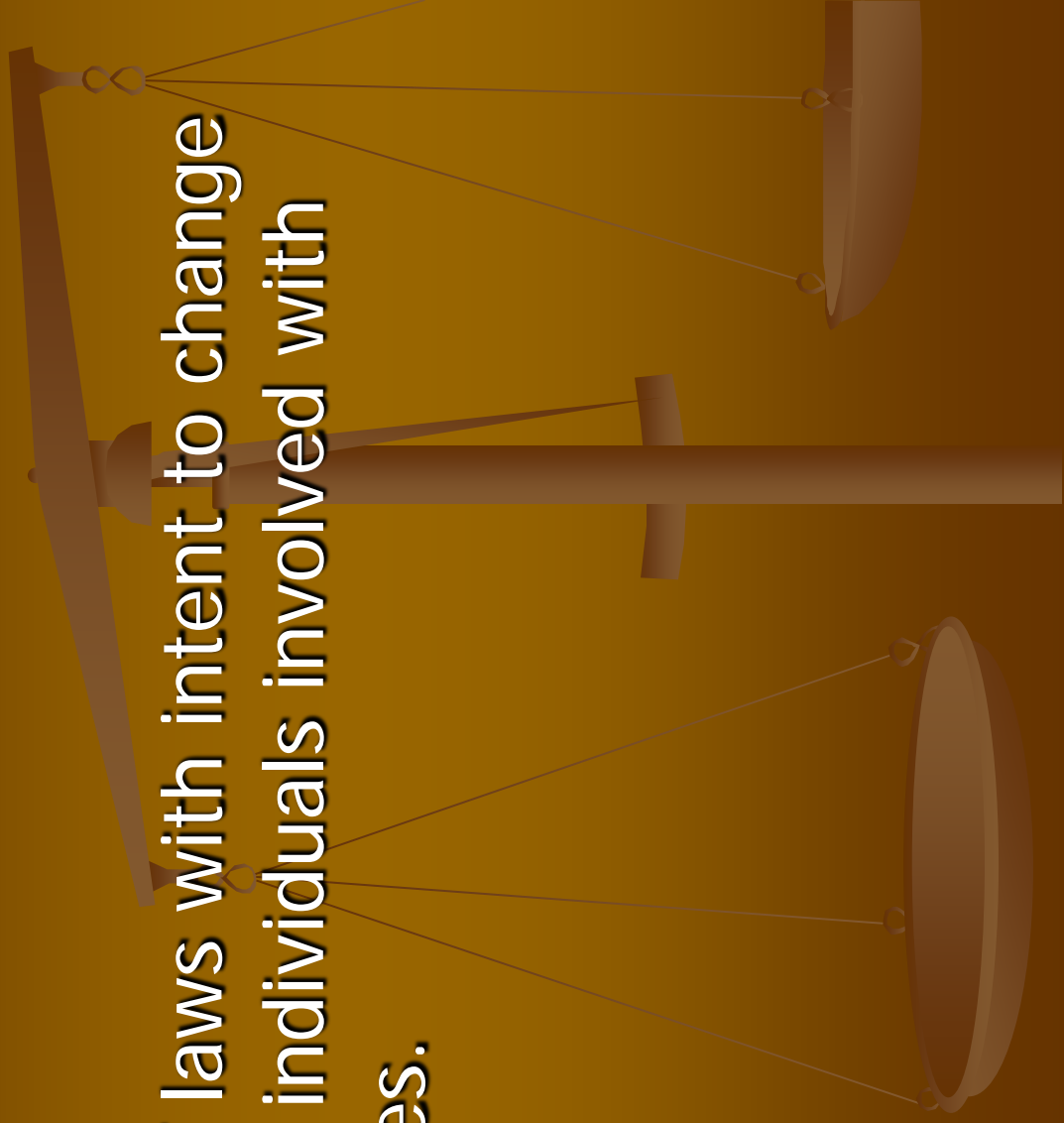
Tukwila

Partnership

- The Tukwila Police Department and the Tukwila Prosecutor's Office work together as partners for meeting the community's needs pertaining to accountability for crimes in our community.

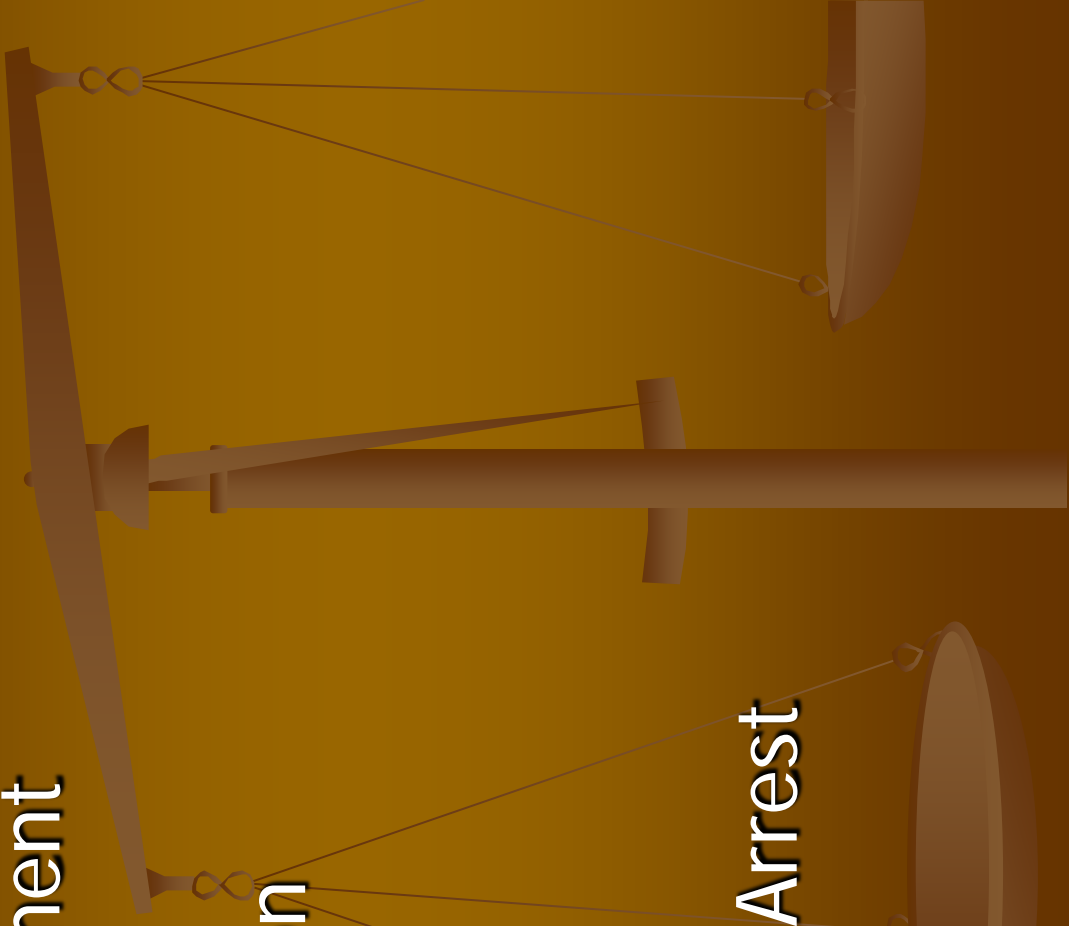
Role of Law Enforcement

- Enforcement of laws with intent to change the behavior of individuals involved with criminal activities.



Role of Law Enforcement

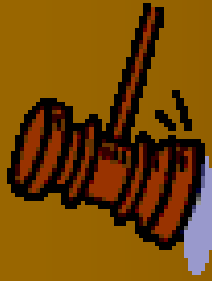
- Engagement
- Discretion
- Citation
- Physical Arrest



Transition from PD to Prosecutor

- Citations and Physical Arrests are cases that will be forwarded to the Prosecutor's office by the Police Department, providing access to potential other diversion programs and/or resources.

The Prosecution Process in Municipal Court

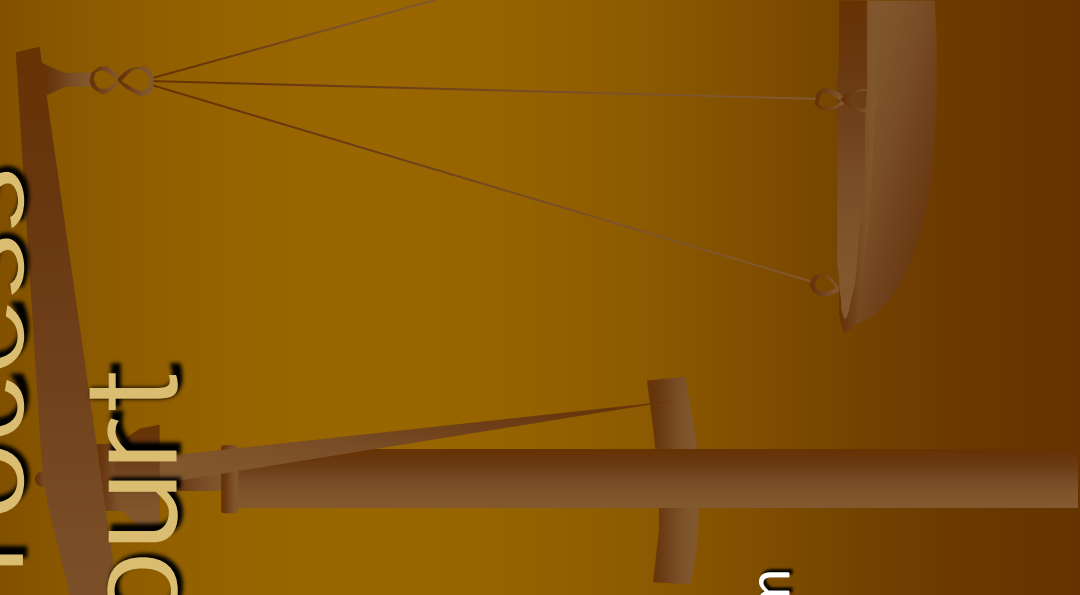


Presented By Aaron Walls

The Walls Law Firm

Prosecuting Attorney

aaron@thewallslawfirm.com



Referral from the Police; In Custody or Out of Custody

- In custody cases have a preliminary hearing the next court day for a filing decision and bail recommendation
- Out of custody cases are reviewed as received and if filed are forwarded to the court to set an arraignment hearing

Filing Decisions



- Prosecutorial standards under RCW 9.94A.411
- Is there probable cause and will there be enough evidence at trial given defenses?
- Type of crime
 - Violent, economic, or a regulatory
- Prior or pending crimes
- Chemical dependency or Mental health issues

Filing decision options



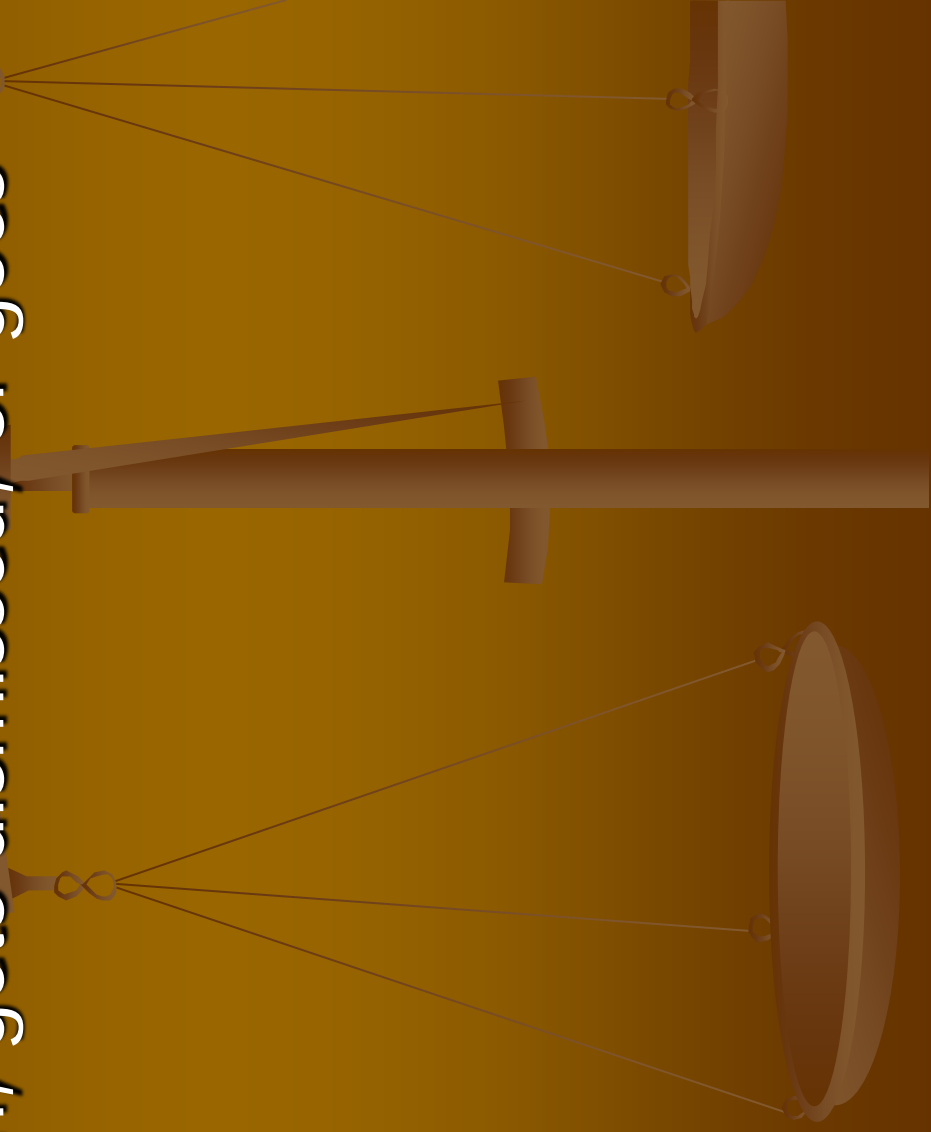
- The prosecutor can
 - decline to file charges
 - refer back for more investigation
 - refer the case to a pre-filing diversion
 - file appropriate charges

Court Procedure

- Once charges are filed an arraignment is held with an attorney, conditions are set, and the defendant is screened for appointment of an attorney
- Defense attorneys get discovery, investigates, gathers information and has their client get evaluations if necessary and negotiates with the prosecution

Case Resolution

The case is either settled with a plea or a pretrial diversion, gets dismissed, or goes to trial



City of Tukwila – Questions for City Contracted Prosecution Services

1. Please describe your firm’s philosophy/reasoning for how you make decisions on whether to file a criminal case or not?

The starting point of every referral is whether there is probable cause to believe a crime has occurred and we believe a crime occurred. The next question is whether there is or will likely be at trial sufficient admissible evidence to prove the case beyond a reasonable doubt given potential defenses. We also consider the prosecutorial standards under RCW 9.94A.411. Major factors in the decision include looking at a suspect’s prior history as well as the suspects current circumstances, whether they have other charges pending, and whether they are competent to proceed. We look at the type of crime, including whether a domestic violence crime or other crime of violence, a crime that involves danger to the public, an economic crime, or a regulatory crime. We look at whether there is a danger or risk to the public and a public benefit to prosecution. Criminal prosecutions should not be brought when no benefit is to be gained either because of evidentiary problems or a lack of ability to serve a deterrent or protective purpose.

2. Please describe your firm’s practices when encountering repeat offenders.

The most important concerns in proceeding with criminal prosecutions is the protection and restoration of victims. The next focus of prosecution should be deterrence and the reduction of recidivism. We strive to identify underlying problems and address them, or to find the correct leverage to prevent the behavior. Substance dependency is frequently an issue with repeat offenders and treatment, when complied with, can be effective. Where poverty or homelessness are issues, referrals to caseworker programs such as LEAD and connecting the defendant to housing, may be helpful. Mental health problems can also lead to repeated criminal behavior. Sometimes dealing with repeat offenders requires a combination of treatment and jail time; for instance, one option is to release a defendant directly to an inpatient treatment facility from jail. For some offenders, treatment and offers of services do not change their behavior and punishment is the only option.

3. Does your firm offer alternatives other than filing criminal cases? If so, please describe your firm’s practice and philosophy on alternatives to filing a criminal case or alternatives to resolving cases.

We use several diversion programs after a case is referred for prosecution. We use a pre-filing diversion program (Friendship house) for economic and regulatory crimes where there is little or no prior criminal history. We divert or amend certain regulatory traffic offenses post-filing in court, to assist the offenders with coming into compliance with regulatory needs. These can include licensing and titling issues. In other cases, we offer post-filing pre-trial diversions based on evidentiary or other issues. These diversions often include a treatment aspect and are monitored by our office. Sometimes they have included community mediation, for instance with an immigrant community with specific ethnocultural traditions.

4. Please describe your firm's philosophy and practice on sentencing recommendations. What type of factors do you consider?

The first issue to address in a sentence is the protection and restoration of any victim in the case. This can be accomplished with no contact orders, restitution, and at times treatment. The goal of a sentence should be deterrence and reduction of recidivism. It is important to take into consideration the defendant's circumstances and prior history, and the triggers that drive the commission of particular crimes, whether it is drugs, alcohol, mental health, anger problems, poverty, etc. If, through particular programs, a defendant can change their behavior or environment, or even get their driver's license, the result is a safer community. Our experience is that this does work. However, it is ultimately up to the defendant whether they want to help themselves. If we cannot create a safer community then we must protect the community, whether that is with jail, electronic home monitoring, or the like. In the end, a prosecutor should consider the individual facts of a case, the efficiency of caseload management and its impact on the court, and the needs of the parties, in a manner that is consistent with the City's philosophy.

Currently the most immediate issues in sentencing involve the pandemic which has restricted or foreclosed options and alternatives. The pandemic has created restrictions at every level from court hearings, trials, jail, community service, and treatment.

5. Last year there was a national awakening to the systemic problems in the criminal justice system. Do you see any problems with current practices of prosecution in Washington State? Do you believe there is room for improvement? If so, where?

There are always problems and room for improvement in any endeavor, especially a highly complex and far reaching one such as criminal justice. Systemic problems that have been highlighted in the last year include the both the disparate treatment of disadvantaged groups as well as the disparate impact that the criminal justice system has on those groups. All parts of the justice system must recognize the unconscious biases that underlie both our decisions and their effects, and we must do our part to address the systemic problems within the system. Historical and systemic issues in the criminal justice system include a lack of access to resources and programs, emphasis on fines and court income, and a focus on jail as a first choice for punishment without alternatives. Some of the most important improvements in the justice system in Washington State will need to be addressed at the State and County level where funding, systemic policy, and the more serious felony offenses and juvenile offenses are addressed. We all need to explore alternatives to criminal justice such as treatment and social worker case management systems.

In general, there needs to be more improvement on directing resources and creating systems that address the underlying causes of crime such as drug addiction, poverty, and mental health issues. Appropriate training should be emphasized that focuses on enforcing criminal justice in a fair and equitable manner.

The most pressing needs include more resources and a better delivery system for mental health, chemical dependency, and poverty case management systems. More alternatives are needed for defendants with a limited history or evidence of a changed life. A more efficient probation supervision

system that is focused on effective rehabilitation is also something we need to continue to work towards.

6. Overview of current process

Criminal cases are referred to the prosecution in two ways. In custody booking are defendants who have been arrested and held on new charges from the previous day. They are brought to court the next day and the prosecutor reviews for what charges if any are appropriate and makes a bail recommendation as to what conditions of release should be set. Out of custody referrals are sent to the prosecutor to review for what charges if any are appropriate. After reviewing a new referral, the prosecutor can refer it back to the officer for more investigation, decline to file charges, refer the case to a pre-filing diversion program, or file charges. When charges are filed the court summons the defendant to court to be arraigned and have conditions of release set. Defense attorneys are present on behalf of the court to advise defendants at each hearing and whether they are appointed in a case is reviewed when conditions of release are set.

After arraignment, the defendant either is provided an attorney, hires their own, or chooses to represent themselves after the court explains the dangers of doing so. The prosecutor provides discovery to the defense. The defense reviews it and may request additional discovery such as other related reports or video from the police or businesses. The prosecutor discusses resolution of the case and may ask the defendant to take steps such as getting evaluations and makes an offer to settle the case. The defendant then decides whether to accept the offer or ask for a trial. If a trial is set the parties interview witnesses and prepare for trial. There is a readiness hearing where both parties decide if they are ready to go to trial, need more time, or, if the prosecutor is unable to proceed due to missing witnesses or other reasons, the case is dismissed. If an agreement is reached the case may be diverted in a pre-trial diversion or a plea is entered, and the defendant is sentenced.

7. Current legislative changes

The most important current legislation for prosecutors is the *Blake* fix. *Blake* was a case which held the crime of possession of drugs in Washington was void because it did not include an element of knowledge. This means that all convictions for possession of drugs is invalidated. In Municipal court this primarily only effected possession of marijuana cases as other drugs were handled as felonies in Superior Court. The fix that has passed the Legislature has added the element of knowingly, but also reduced all possession of drug crimes to misdemeanors which will now be filed in Municipal court. No additional funding was provided to accommodate this. The fix also eliminated personal drug paraphernalia charges and encourages treatment diversions for these crimes.