



INFORMATIONAL MEMORANDUM

TO: Community Services and Safety Committee

FROM: David Cline, City Administrator

CC: Mayor Ekberg

DATE: ~~May 11, 2021~~ [May 27, 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](#)
[Public Defense Questions and Responses](#)



TUKWILA PUBLIC DEFENDER

CITY COUNCIL PRESENTATION

THE ROLE OF THE PUBLIC DEFENDER

- ▶ “There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. He is entitled to a lawyer with the time, resources, experience, training, and commitment for which a person with means would pay. For if a poor defendant requires a comparable trial to his wealthier counterpart to ensure equal justice, and the quality of the lawyer dictates the quality of the trial, equal justice can only be guaranteed where the poor person has access to the same level of representation as the person who can afford to hire counsel.” Keynote Address: Reclaiming Our Rightful Place: Reviving the Hero Image of the Public Defender 2014

COURT

Notice of Appointment

Court

- Notice of Appearance (NOA) Tells court we are attorney or record for defendant

Prosecutor

- Send request for discovery
- Asks city to provide police report and other evidence they intend to use against defendant

Client

- Initial call
- Confirm contact information
- Answer initial questions
- Set appointment

Analyze Police report

- Facts
- Legal Issues
- Credibility
- Client's version

- Private Investigator
- Social Worker referral
- Immigration referral

Conversation with the Prosecutor

- Pertinent Facts / Legal Arguments
- Collateral information

- Progress in treatment
- Progress at work
- Criminal history
- Housing situation
- Etc.

Set for trial



Lack of Resources leads to an
uneven playing field.

Financial Strain

Inability to Post Bail
Unable to maintain a job
Unable to find childcare
Unable to meet LFOs > start cycle again

Homelessness

Unable to receive mail
Unable to receive government assistance
Basic needs are not being met
Resort to crime to meet needs or warrant issued for missing court notice > start cycle again.

Chemical Dependency Issues and Mental Health Issues

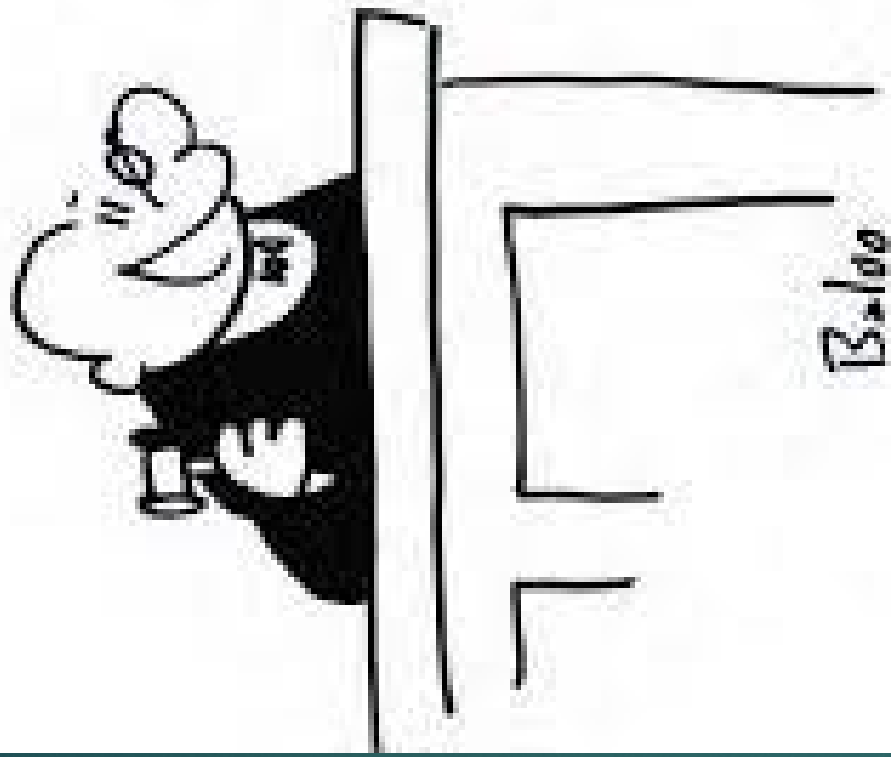
Limited access to treatment due to insurance coverage
Long waiting lists due to insurance coverage
Lack of contact information to ensure treatment progress is made
Resort to crime to cope with addiction or mental illness > start cycle again



Advocating for our clients



Challenges and Issues with the Public Defense System



"Now, then — would you prefer a speedy trial or an accurate trial."

Balancing Caseload



True peace is not
merely the absence
of tension: it is the
presence of justice.

Martin Luther King, Jr.





Understanding the nature of the work

Educating clients on expectations

Diligent communication



Communicating with Incarcerated Clients



Zoom meetings

Client calls

Private break out rooms during court

Paperwork exchange facilitated by jail staff



Feedback for Prosecutors



Keep it up.

Punishment = last resort

Acknowledging that improvement is the goal



Increasing our Power

RAP SHEET



COLLEGE APPLICATION DENIED

Lex



Acknowledge collateral consequences and mitigate

Legally limit misdemeanor data dissemination

City of Tukwila – Public Defense Questions

4.5.21

1. What challenges or issues have you experienced with the public defense system?

The cases that we are confronted with in Municipal Court are misdemeanor and gross misdemeanors, so by their very nature, while they can be serious charges, they are not felonies. It is a challenge to keep the playing field balanced. Clients who cannot afford to hire a private attorney often lack the resources wealthier defendants can rely on to minimize the impact of a criminal case on their lives. For instance, it is mandatory in this state to arrest and book somebody charged with a domestic violence assault. Domestic Violence is a crime that impacts the population as whole, not just poor people. If bail is set in such a case, an individual who can afford to post it can pursue every option in their defense while continuing to meet their other obligations. A poor client, unable to post bail, is under tremendous pressure to resolve the case as quickly as possible in order to get out of custody. This often means pleading guilty and giving up their chance to take their case to trial.

Even when public defense clients are not in custody, they are confronted with different issues than the well situated. Many defendants, rich or poor, find themselves in municipal court because of either chemical dependency, mental health issues, or both. While it is true that the Affordable Care Act makes treatment more available, that is substantially different than immediately available. Long waiting lists to get a bed date for an indigent client is different than immediate access to those who have private insurance. Those who can immediately access treatment are more likely to be successful soon and get their lives back to normal. A chemically dependent public defense client often times continues to get in trouble while waiting for a bed date. They are often homeless, continue to use, steal for food or to feed their addiction and end up back in jail.

Public defense clients often are balancing keeping their jobs, taking care of dependents and making court appearances. Often, their address and other contact information change making it difficult for us to maintain contact with them. Missed court dates can lead to getting arrested on a warrant. Lacking the resources to post bail, they are forced to work out a resolution of their case that may be far less favorable than the options we could have originally arranged for them. Perhaps the biggest challenge public defenders face is trying to level this uneven playing field.

2. How are you advocating for your client to the prosecutor once you see how charges are filed? What workup are you doing to get to a fair resolution?

Advocating for our clients begins by taking a look at the strength of the City's case. This typically starts with analyzing the police report. Do the facts as they are presented support the charges filed? Are there legal issues, like search and seizure violations? How credible are the witnesses involved?

Next, we need to talk to our client to get their side of situation. Sometimes their version is consistent with the allegations, sometimes it is not. When it's not, we will generally get our investigator involved so that we can interview witnesses. It's important to know if there are witnesses who can support our client's version of events. It's equally important to know when a witness may be harmful to our case. We also review videos from stores, police body cameras and other sources to determine whether they are consistent with the statements in the police report.

Once we have a thorough understanding of the case, we discuss it with the prosecutor. It is at this point we explain additional mitigating factors like a client's lack of criminal history or positive steps they have taken since the original incident. In some instances where our case is very strong or our client is uninterested in a settlement, we simply tell the prosecutor that if they won't dismiss the case, we are setting it for trial. More often there is negotiation with an eye towards minimizing the impact on our

clients. This may include examining steps a client can take to invest in themselves such as treatment or counseling that will lead to a favorable outcome and will minimize the risk of reoffending.

3. How do you balance managing your caseload while also leaving work at work?

This can be difficult because often our clients are not always available to discuss things during regular business hours. It is inevitable that you answer emails and set up appointments at times that you would normally consider off hours. The best way not to take your work home with you is by not setting yourself up for stressful situations. By returning calls and emails, you reduce stress because you and your client are prepared when you go to court. Educating your clients so they have reasonable expectations is also important. Experience goes a long way to easing stress.

4. How are you meeting with clients and keeping them informed when they are incarcerated? What does that look like during covid?

Prior to the pandemic we would schedule a time to visit with our clients in jail. Since Covid we set up appointments to see and talk with our client on Zoom. While it is not ideal, the jail staff does give us privacy while we are talking with our clients. They are also helpful with providing our clients with plea paperwork and making sure we get the paperwork back so we can utilize it in court when needed. We also accept collect calls from the jails. This allows our clients to call us for a confidential conversation at no cost to them.

5. Do you have any feedback about prosecutors?

Although we frequently disagree with the prosecutor on specific cases, the prosecutor's general approach fits with the philosophy of the Court. Tukwila Municipal Court is not a punitive court by its nature. While punishment is handed out, it is always a last resort. The preference is to put the defendants in a better position than when they were first charged with a crime. The prosecutor has bought into this mentality.

6. If you had more power in public defense, what would you do with it?

One of the most frustrating things about these cases is the collateral consequences that occur when our clients resolve their criminal cases. While the jail time and court costs are the obvious penalties a defendant faces, the impact on their lives can be significantly more far reaching. A criminal conviction for even a misdemeanor offense can have a devastating effect on a person's employability, housing options, immigration status, drivers' license and even their ability to volunteer at their children's school. Even in cases where we reach agreements that will lead to the dismissal of charges, we see our clients lose their jobs or place to live. Rather than giving misdemeanor defendants a path to follow to better circumstances, these collateral consequences trap them in a loop where their prospects for a better life are diminished, increasing the likelihood that they will reoffend.

If we had the power, we'd change this system by legally limiting the manner in which data from misdemeanor cases can be used against those charged. In the information age we live in, access to court data is readily available. However, it is often misinterpreted and disproportionately impacts persons of color. A thoughtful system which at the very least prohibited using this information against a person who was never even found guilty, would go a long way towards making the justice system more just.