

2024 Supplemental Department Questions

Please answer the following questions in a word document and return to Council. The answers to these questions will be provided to council as supplemental information. While not part of the physical budget presentation to Council, departments should be prepared to answer questions Council may have on these supplemental questions. If you feel that you have provided an answer in a previous question, please don't repeat your answer, simply refer to the earlier question/answer.

Strategic Goals

- 1. Provide your 2024 strategic goals; how are they different from 2023? In what way, if at all, are your strategic changes demonstrated in your budget request?**
- **The PA Office's primary strategic objectives** largely remain the same, year to year. It is to provide timely, unfailingly accurate, best business practice legal advice to all county departments; and to vigorously advocate for and advance community safety by fairly and justly reviewing and prosecuting criminal and family support cases referred to our office. Our ability to meet these latter objectives is, however, inexorably linked to having the necessary human resources to do so. As expressed more fully below, the exponential rise in the number of criminal referrals that include large amounts of digital media evidence; the increase in homicides and other violent crimes and the impact of firearms-related offenses overlayed by the fentanyl crisis; the trickle-down effect of caseload standards resulting in a more time-intensive and litigious approach to criminal defense; combined with attrition, the loss of more experienced DPAs, and changes in rules, statutes, and decisional authority, have all added to the labor intensity of virtually every case, thwarting our best efforts to keep up with demand.
- **Office-wide strategic objectives** – Obtain executive and legislative budgetary support to address the profoundly time-consuming increase in digital media evidence now populating criminal referrals, and the unprecedented professional turnover we continue to experience due to the combined effects of difficult and demanding caseloads and pay disparity with both private and other public sector employers.
- **Criminal Division strategic objectives** – (1) Recruit diverse new legal talent to our criminal division who are committed to ethically and effectively serving our community, championing the rights of victims, preserving the rights of the accused, holding those who harm others accountable, and fashioning alternatives to traditional prosecution when facts and circumstances so dictate; (2) retain the attorneys and staff whom we have trained and mentored and to whom we have dedicated significant temporal and fiscal resources; (3) continue to offer state of the law individualized training to new and less-experienced DPAs; (4) continue to address the reduction of the felony and misdemeanor case backlogs in charging that linger as a consequence of the pandemic; (5) with the addition of our requested Hate Crimes Unit, more quickly, responsively, and culturally competently review and process criminal referrals motivated by bias against race, color, religion, national origin, sexual orientation, gender, gender expression or identity, or mental, physical, or sensory disability; and (6) more efficiently and effectively review and process the ever-growing volume of cases that involve large amounts of digital media evidence.
- **Civil Division strategic objectives** – (1) Maintain effective technological infrastructure; (2) continue to develop internal specialties and subject matter expertise to better serve

the County; and (3) continue partnering with Risk Management to identify, control, and reduce county liabilities.

- **Family Support Division strategic objectives** – (1) Provide efficient and effective representation of the State of Washington on the establishment and recovery of child support obligations; (2) meet federal timelines in parentage establishment; and (3) monitor and make improvements to support order modification procedures in anticipation of federal timelines for these cases in the future.

National, State and Local Landscape:

1. What are the federal, state and local issues facing your work? What risks or opportunities does that create for you in 2024 and beyond? What is your plan to leverage the opportunity or mitigate the risk? What support do you need?

- Criminal Division Deputy Prosecuting Attorney and staff attrition and consequent loss of experiential capital.
- The increase of body worn, and dash mounted, cameras and other digital media evidence have collectively resulted in thousands of additional hours required to review and prosecute criminal referrals.
- The increase in homicides and other complex violent crime and impact of firearms-related offenses on public safety overlayed by the fentanyl crisis continue to tax our experienced and under-experienced hard-working DPAs.
- The ever-changing legal landscape for DPAs and local police agencies in light of recent state legislative enactments, consequential Supreme Court and Court of Appeals rulings, and new state and local court rules.
- The ongoing integration of Snohomish County Health District into county government.

The PA's 2024 budget request is a direct response to the above realities for DPAs and staff. Attrition and the loss of experience in the face of increasingly complex and escalating violent crime and the impact of firearms offenses is a pervasive threat to public safety on its own. Yet, this threat, combined with the substantial additional time per file needed to review and consider digital media evidence, and the recent changes to the law imposed by our legislature and the courts only add to the challenges confronted by Criminal Division attorneys and staff.

2. What, if any, new mandates do you have impacting your work? Are they funded or unfunded? What is the plan for accomplishing the work?

As indicated in this same document last year, an unprecedented number of unfunded mandates handed down from our legislature and state and local courts, along with the much more burdensome than anticipated case management consequences brought about by the Executive's body worn camera initiative have, in the face of limited human resources, adversely impacted our ability to more efficiently fulfill our commitment to public safety to our community. Among them:

- In 2022, the Council authorized two project positions for our office, one a full time Deputy Prosecutor, and the other a full time Legal Assistant, to help address the anticipated evidentiary and case management burdens associated with the concomitant approval

and funding of the Executive's body worn camera initiative. The project positions are scheduled to sunset on June 30, 2024. There has been an explosion of body worn camera, dash-mounted camera, and other digital media in cases referred by the Sheriff's Office and virtually every other law enforcement agency in the County. The increased labor intensity of every case that includes such evidence, sometimes by three, four, and five officers, has easily doubled. Multiply that by many hundreds of cases and many dozens of DPAs, and we've learned that the addition of one DPA and one Legal Assistant, while very helpful, falls far short of offsetting the increased workload. Resolving caseload backlogs has been confounded because of the added time associated with downloading, reviewing, redacting, producing, and preparing for trial those cases containing digital evidence. In our felony division in 2022 and 2023 (based on the first six months), in digital video media alone - not including digital graphic media (still photos) and digital audio media (sound) - we will have received 31.8 terabytes of digital video evidence from our law enforcement partners. More than triple the 9.3 terabytes we received in 2019 and 2020. This year, we estimate that in the aggregate, DPAs and staff will have spent approximately 5000-6000 more hours than they otherwise would have, just managing digital media evidence, a three-fold increase compared to years past; and these numbers are likely to only increase.

- *In Re Monschke* and the *Blake* decisions have increased workload to line DPAs and staff. The *Monschke* decision requires the resentencing of many youthful offender defendants convicted of life in prison with the possibility of parole. *Blake* concerns the vacation and/or resentencing of those previously convicted of felony Possession of a Controlled Substance.
- Revisions by our local Superior Court to court rules and procedures have substantially increased the time DPAs are required to be in court each week.
- Changes in legislative enactments impacting police practices and procedures have led to more frequent and complicated legal consultations with DPAs and search warrant reviews. Notably, recent changes to the Washington Administrative Code related to rules concerning officer-involved uses of deadly force have increased review and consultation among our DPAs assigned to the SMART team and the Assistant and Chief Criminal DPAs.
- The Legislature's decision to all but eliminate financial penalties as a condition of sentence upon conviction has served to reduce the revenue stream to Fund 118 by approximately 90%. Fund 118 has been the revenue source covering the salaries and benefits for the majority of the FTEs in our constitutionally mandated Victim/Witness Advocate program.

Programs

1. List programs, projects and services within your department funded through federal COVID/ARPA funds. What, if any, of those programs are you recommending ongoing funding for and what is the source of ongoing funding?

- We are asking that three of our six ARPA DPAs and our lone ARPA Victim Advocate be made regular fulltime FTEs. Two of the DPA slots will have the consequence of allowing us to at least tread water against our backlog.
- We are very grateful for the ARPA positions allocated to hire Criminal Division DPAs and staff to help reduce the case backlog created as a consequence of the pandemic. In a perfect world, we would have filled every ARPA position before the end of 2021, and by

this date accomplished two-thirds of our goal. The post-pandemic public sector employment market, however, had other ideas. Decades of below-market compensation finally took its toll. The great resignation began well before the ARPA positions were approved, but the combination of burdensome caseloads, work that carries less prestige in the Police Reform era, and salaries that hover around one-third below the market in comparable counties and cities, meant the applicant the cupboard has often been bare. And on top of that, good employees continue to leave for better opportunities. In fact, over the last 4 years we have lost 50% of our Criminal Division DPAs to other employers.

- Coinciding with that frustrating and unforeseen hiring challenge has been a constellation of circumstances beyond the control of this office that have significantly increased the time it takes to review and prosecute our cases. As mentioned above, they include, but are not limited to: 1) the increase in homicide referrals (we currently have more pending murder cases - 81 open homicide files as of this writing - than our Major Crimes and Violent Crimes Units can handle) requiring many of these files be assigned to lesser experienced attorneys in other units, which necessarily and unavoidably takes time away from prosecuting their core caseload; 2) changes to the local rules that have frontloaded certain discovery obligations requiring more time devoted to that task, even in cases destined to plead; and 3) navigating large caseloads in an era populated by a more advocacy and litigiously inclined public defense bar, where the trickle-down effect of caseload standards has resulted in a more adversarial and time-intensive approach to criminal defense, which means most every case takes longer to prosecute. All of which is compounded further by the afore-mentioned growing volume of time-intensive digital evidence now included in most criminal referrals. In truth, we could use another dozen DPAs to keep up with these impacts, but we believe this incremental approach to achieving balance is a fiscally supportable and responsible first-step approach.

2. *For programs funded by COVID/ARPA funds, detail the plan to close out and/or transition those programs to an ongoing funding source in 2025 and beyond.*

Our plan is to transition all of our ARPA funded project positions into fulltime FTEs over the next two years as an essential and necessary way of meeting the demands described above.

3. *What new programs are you launching for 2024? What need or efficiency is that new program addressing? How is that program funded for sustainability? What metrics are in place to determine effectiveness?*

- We seek to add one full time Deputy Prosecutor and one full time Victim Witness Advocate (transition them from existing ARPA project positions to regular fulltime positions) to create a Hate Crimes Unit within the criminal division, elevating the attention these cases deserve. The DPA and Victim Advocate would work and train with local law enforcement agencies in a unified effort to better investigate and prosecute hate crime cases with a victim-centered and culturally competent approach, building trust with these vulnerable and often marginalized populations, thereby measurably increasing the chances of securing critically important victim participation and successfully holding those who commit these offenses accountable. A swift and strong response by law enforcement and the Prosecuting Attorney's Office can help impacted communities feel more safe and secure, as well as aid in a victim's recovery. The

establishment of a Hate Crimes Unit will allow our office to more formally and consistently engage with marginalized communities, provide more comprehensive training and coordination with law enforcement, afford more time and resources to fully analyze and, where possible, strengthen referred hate crime cases, and provide timely referrals to support services and crisis management for hate crime victims. (See Priority Package 398).

- The Prosecuting Attorney's Office joins the Office of Public Defense in a placeholder priority package request for an expected contract with Axon, to purchase likely upwards of 200 licenses for their product, Evidence.com, an enterprise digital evidence management system. As indicated above, the volume of digital evidence created and/or collected by law enforcement and submitted to our office is staggeringly large. The County does not have the capacity to meet our long-term digital media storage needs. Evidence.com offers us the ability to upload an unlimited amount of digital evidence regardless of file type, in one CJIS-compliant secure cloud. Critically, Evidence.com will allow for the storage and playback of virtually any kind of digital media. This will eliminate frustrating and considerably time-consuming process of figuring out how to download and view digital media recorded on a host of unfamiliar, proprietary platforms (the 7-Eleven in Lynnwood has a different video surveillance vendor than does Providence Hospital, than does the Martha Lake Apartments, than does Mary's Towing, etc.). Additionally, Evidence.com includes a Redaction Assistant feature that allows license holders to excise excluded evidence for presentation at trial and exempted/privacy protected images when producing digital media pursuant to a public records request; all while protecting the media's metadata. The product also includes Axon's Transcription Assistant Software, which can transcribe recorded speech, (including all of the interactions between police officers and witnesses, victims, and suspects captured on body-worn cameras) to create a searchable document.
- Transitioning our Victim/Witness Advocate program out of Fund 118 to the general fund because the Legislature has effectively eliminated the revenue source for those FTEs. This is not a request to increase our staffing levels but is merely intended to preserve our 8.5 advocate positions (note, Pierce County, comparable in size to Snohomish County, has 18 victim advocates).
- Add two new DPA positions to address the impact digital media evidence has on the additional time it takes to review and prosecute cases.

Internal Operations

1. ***What is your department doing to streamline processes or deliver services in a new way? How do your budget allocation requests play into these innovations? Are there ways which a different budget approach, e.g., several departments sharing a resource, could achieve the same or better results in a more cost-effective way?***
- Ours is a largely time-on-task working environment. The speed, and thus the efficiency with which we review files, propound and produce discovery, interview and prepare witnesses, meet with clients, consult with experts, conduct legal research, draft pleadings, write letters and memoranda, attend depositions, and appear in court and administrative hearings is predicated almost entirely on the speed with which we read and write and talk, and how thoroughly we undertake each task. Virtually none of this work can be automated. We do have a host of tools that assist us in being both more organized and efficient, including a robust, though aging, electronic case management

system, a digital legal research platform, e-service and electronic case filing capabilities, and one-stop network resource guides, but the ongoing effort to qualitatively improve the work we do is largely tied how we manage, train, organize, and use our human resources.

- With Counsel's support, this past year we created: 1) a comprehensive training program staffed by a full-time senior DPA designed to address the both the impacts of attrition and the constant evolution of the law for both prosecutors and police; 2) a Major Crimes Unit staffed with two additional FTEs centralizing the prosecution of the most complex cases among a small group of highly experienced DPAs, leveraging their specialized experience to allow other DPAs to attend to their primary responsibilities; and 3) a new DPA position to address the impact of firearms-related offenses, particularly by persistent offenders. And it is precisely these kinds of programmatic change that streamlines our processes and makes us more efficient.
- Adding a Hate Crimes DPA and Victim Advocate, along with two regular, fulltime DPA positions to address the impact digital media evidence has on the additional time it takes to review and prosecute cases help serve the same ends.

2. What, if any, hiring challenges are you experiencing? How is that affecting your level of service or internal operations? How are you mitigating those operational challenges and/or what is your plan for recruitment?

- The growth of Snohomish County's resident population requires departmental growth to maintain an appropriate level of service. Since the great recession of 2008, Snohomish County's population has grown by over 22%. This has brought a corresponding increase in crime – in fact, the Sheriff's Office has grown its regular FTEs by over 13.5% during this same time frame. Both the Superior Court and the District Court have been burdened by this increase in workload due to population growth. The Superior Court grew its bench by over 13% recently adding two more judges, and the District Court grew by over 12% adding a new jurist this year. However, my office's regular FTEs have grown by less than 7% since 2008 (even the Executive's Office has grown by over 14% during this same time frame). The staffing imbalance is real and is adversely affecting the criminal justice system. We have asked for more positions over this time frame, but the answer from the Executive Offices have remained that budget constraints do not allow for growth. This imbalance in the criminal justice system has been further exacerbated by mandatory case load standards for public defenders and disproportionate increases in budget authorizations. The County's General Fund budget authorization for public defense has grown by 122% during this same time frame (from \$6.7m in 2008 to \$14.9m in 2023)!
- Desperate times call for desperate measures. In our District Court Unit, due to employee turnover discussed below, the lead attorney is handling a full case load when she should be supervising, mentoring, and training the newest attorneys in our office. Our Chief of Staff has stepped in and is covering a full caseload for Evergreen District Court, and felony attorneys are covering trials in district court. The Criminal Appeals unit is struggling following the departure of an experienced appellate DPA for private practice. As a result, several DPAs in the Civil Division have volunteered to take on some Criminal appeals while the unit struggles to keep up with the volume of post-conviction appeals (which has dramatically increased due to changes from the legislature).
- In a two-week period, last month alone, we had two DPAs leave the office (one to another public sector job, the other to do insurance defense work), another DPA quit before he actually started, and a fourth quit after 3 days on the job. The work we do is

hard, complex, and emotionally draining. It does not help that every 4-6 weeks the County sends out another all-hands email updating the “progress” on the class and comp study. This periodic reminder is nothing more than a gut punch to an overworked group of employees – a reminder that they are underpaid (DPAs are 30% under market value). On the staff side, we have had a constant “help wanted” sign hanging in our front window as we continue to lose good employees to higher paying public sector jobs.

3. To help inform Council on experiences around hiring and retention, please provide a list of all vacant position titles, position codes, FTE amount (1.0, 0.5, etc.), date vacated, and date first posted. Template spreadsheet attached for convenience and conformity; if already tracking information in another format, that is acceptable as well. Please list each vacancy separately.

- Please see attached spreadsheet. Notably, 5 DPA vacancies exist in the Criminal Division—3 for an entry level DPAs and 2 for experienced/lateral DPAs.

4. What effect has the increase of inflation and/or supply chain issues had on your department? What, if any, services, or projects have you had to adjust to accommodate for this? (i.e., moving to outside contracted services, delaying of project starts and/or purchasing, redistribution of workload, etc.)

- Inflation has had an adverse impact on our ability to recruit and retain employees in light of stagnant existing salaries and the attendant increase in the price of goods and services.

5. When was the last time your department implemented a fee increase? Do you have any plans to increase fees?

N/A

6. Do you have any plans to do a rate/fee study? Are your current fees established based on a full cost recovery model?

N/A

Successes

1. Take this opportunity to share one significant success in your department over this past year. What made it a success?

- As you know, we are an office of lawyers, supported by very able staff, who handle thousands of cases and nearly as many requests for legal advice annually. And as such, it is difficult to point to a single piece of litigation or advice that stands apart from the excellent work done every day over the course of a given year. Broadly speaking, notwithstanding the significant external and internal challenges faced by our attorneys and staff day in and day out—many of them listed throughout this memorandum and

serving as abundant justification for our budget request—the good and dedicated public servants we employ make significant and important contributions to the function and success of Snohomish County government while also making our community safer and more livable.

- That being said, it is worth repeating that the Civil Division received a well-earned, favorable decision from the Washington State Supreme Court in the Point Wells land use matter. Over the past decade the Civil Division provided ongoing legal advice to county clients concerning the Point Wells site in unincorporated Snohomish County. The office represented the county in litigation regarding the proposed development of the site including before the county hearing examiner, the growth management hearings board, superior court, court of appeals, and the state supreme court. This summer the Washington State Supreme Court issued an order denying the developer's request for review of a court of appeals decision that upheld the County's denial of the development applications for the Point Wells urban center. This positive outcome for the County, both in terms of defending the adequacy of the County's land use decision making and minimizing liability exposure, paved the way for annexation of the Point Wells area to the Town of Woodway.
- In the Criminal Division, the guilty verdict and life sentence obtained in the senseless, brutal, execution-like aggravated murder of Everett Police Officer, Dan Rocha, stands out as an example of the hard work, excellent teamwork, and superlative lawyering we strive for every day.
- From a programmatic perspective, our Law Enforcement Assisted Diversion (LEAD) continues to grow and to be an example for other counties in how to build a program that partners with law enforcement, municipalities, and other social service agencies to reduce criminal recidivism and improve community health and safety by effectively coordinating with law enforcement to divert eligible and willing offenders away from the revolving door of jail and prosecution into intensive case management and wrap-around supportive services.