



SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

ORDINANCE NO. 21- 009

RELATED TO THE 2021 BUDGET; MAKING AN EMERGENCY APPROPRIATION IN  
GENERAL FUND 002 TO PROVIDE EXPENDITURE AUTHORITY FOR  
UNANTICIPATED COSTS IN THE OFFICE OF PUBLIC DEFENSE

BE IT ORDAINED:

Section 1. The County Council makes the following findings of fact: An emergency appropriation in the amount of \$445,000 is necessary in General Fund 002, for budget year 2021 to provide expenditure authority for unanticipated costs associated with the continuing caseload increases and backlogs attributed to the Covid-19 pandemic.

Section 2. The appropriation unit and allocation detail for the emergency appropriation described in Section 1 are as follows:

EXPENDITURE:

002 General Fund

002.5321274107 PDA Felony Attorney Fees \$ 445,000

**Total Emergency Appropriation: \$ 445,000**

REVENUE:

002 General Fund

002.3169900800 Fund Balance \$ 445,000

**Total Revenue: \$ 445,000**

Section 3. The County Council further finds as a fact that there is need for additional expenditure authority to pay for unanticipated costs associated with the continuing caseload increases and backlogs attributed to the Covid-19 pandemic. The need for this appropriation was not known and could not have been determined prior to the adoption of the 2021 budget. The County Council therefore finds that the need for the appropriation authorized by this ordinance constitutes a public emergency that could not reasonably have been foreseen at the time of budget approval and appropriation for the year 2021 and hereby authorizes the appropriation.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2021.

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SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

\_\_\_\_\_  
Council Chair

ATTEST:

\_\_\_\_\_  
Asst. Clerk of the Council

( ) APPROVED

( ) EMERGENCY

( ) VETOED

DATE: \_\_\_\_\_

\_\_\_\_\_  
County Executive

ATTEST:

\_\_\_\_\_

Approved as to form only:

/s/ George B. Marsh 1/26/2021  
Deputy Prosecuting Attorney



**Snohomish County Council**

**Committee:** Finance Committee  
**ECAF:** #71092  
**Proposal:** Ord 21-009

**Analyst:** Jim Martin  
**Date:** February 4, 2021

**Consideration:**

Related to the 2021 Budget; Making an emergency appropriation in General Fund 002 to provide expenditure authority for unanticipated costs in the Office of Public Defense.

**Background**

As a result of the COVID-19 pandemic, there is a significant backlog of unresolved criminal cases being referred to the Public Defenders Association. This backlog has created a situation where, even with the recently adopted contract (adopted by Motion 20-537 in December of 2020), the number of cases puts Snohomish County out of compliance with the Washington State Bar Association caseload standards. This creates a potential legal liability for the County.

Proposed Ordinance 21-009 would appropriate an additional \$445,000 to the Office of Public Defense for the purposes of amending the contract with the Public Defenders Association. The amendment would allow for the hiring of 3 additional felony attorneys (2 attorneys, and 1 supervisor), to maintain compliance with caseload standards.

**Current Proposal**

To make an emergency appropriation in General Fund 002, Office of Public Defense of \$445,000 to allow for a contract amendment with the Public Defenders Association.

*Duration:* N/A

*Fiscal Implications:* \$445,000

**2021 Budget:**

*Is this in the current year budget.* No

**Future Budget Impacts:** N/A

**Handling:** Expedite, to allow for time for contract amendment.

**Approved-as-to-form:** Yes

**Risk Management:** N/A

**Executive Recommendation:** Approval

**Attachments:** Refer to the submitted ECAF that includes the following attachments:

- (1) Proposed Ordinance
- (2) Memo from OPD.

**Amendments:** NONE.

**Request:** Move to Council to set Time and Date for Public Hearing.



**Snohomish County**  
**Office of Public Defense**  
3000 Rockefeller Ave  
Everett, WA 98201-4046

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**DATE:** January 20, 2021

**TO:** Ken Klein,  
Nate Nehring, Chair – Snohomish County Council  
Stephanie Wright, Vice-Chair – Snohomish County Council

**FROM:** Jason Schwarz, Director – Office of Public Defense

**CC:** Kathleen Kyle, Director – Snohomish County Public Defender Association

**RE:** OPD COVID Staffing Needs

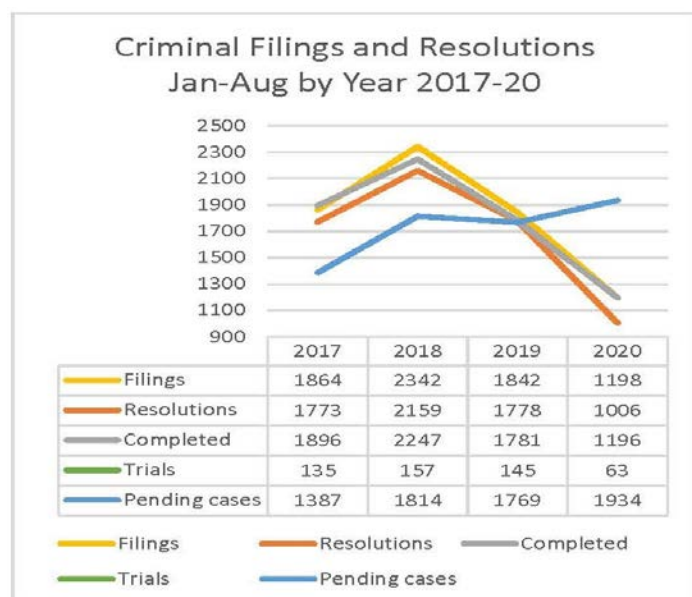
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**Background:**

The public defenders working in Snohomish County are facing an unprecedented volume of 1) open, or unresolved criminal cases, and 2) an increase in cases which take longer to resolve, mostly because of COVID. COVID has created a years-long backlog of criminal cases pending resolution. The volume of cases backing up exceeds the threshold allowed by The Washington State Constitution, Washington State Bar Association – Indigence Defense Standards, and SCC 2.09.080. To bring the County into compliance, the Office of Public Defense seeks to amend the 2021 contract with the Snohomish County Public Defender Association (SCPDA) and seeks Council’s approval to add 2 FTE felony lawyers and 1 FTE attorney supervisor in order to bring SCPDA into caseload compliance. The cost to the general fund for these positions would be \$444,077.16 for 2021

**Summary:**

COVID has created an unprecedented backlog of unresolved criminal cases in the trial courts. As cases remain unresolved, public defenders are representing more persons than ever. In addition to the increased volume of open cases, public defenders, unlike prosecutors, are ethically required to uphold consistent communication with their clients – this has been particularly time-consuming during COVID. Judge Weiss informed the Council that the backlog will take approximately four years to resolve.



In addition to representing more defendants at one time, the PDs are representing people on more serious cases that require more time to effectively resolve. The chart below the percentage of serious cases as a percentage of caseloads. The amount of time it takes to represent an accused person because of the volume of open, serious cases is unprecedented in our county.

|       |       |       |       |       |       |       |
|-------|-------|-------|-------|-------|-------|-------|
| 2007  | 2008  | 2009  | 2010  | 2011  | 2012  | 2013  |
| 5.05% | 4.93% | 8.37% | 8.09% | 6.00% | 6.74% | 6.89% |

|       |       |       |       |       |       |        |
|-------|-------|-------|-------|-------|-------|--------|
| 2014  | 2015  | 2016  | 2017  | 2018  | 2019  | 2020   |
| 6.99% | 6.10% | 5.54% | 5.33% | 5.46% | 6.15% | 25.04% |

The impacts of COVID is being felt throughout the state. Each county is responding differently. In King Co., the Department of Public Defense has gotten approval to hire additional FTE lawyers and offer \$20,000 contract retainers to their panel attorneys in exchange for an agreement to take cases.

The County is obligated to pay for the representation of lawyers when our public defenders cannot certify consistent with bar association standards.<sup>1</sup> SCPDA has informed OPD that it cannot certify with current caseload standards. Failure to bring public defense into compliance with caseload standards risks liability for the county and, more pressingly, contributes to the backlog of cases and provides substandard representation.

**Solution:**

After exploring a variety of options, and in order to bring SCPDA back into caseload compliance with the Court and the bar association, they must hire two additional felony lawyers and a supervisor. The breakdown of costs is:

- 1 FTE Felony Supervisor - \$178,092 (or \$14,841/mo)
- 2 FTE Felony Attorney - \$265,985.16 (\$11,082.72/mo totaling \$132,992.58/year per FTE)

**Conclusion:**

OPD seeks approval from Council to fund two additional felony lawyers and one supervisor at SCPDA and amend the contract between OPD and SCPDA to reflect the change.

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<sup>1</sup> Public defenders have caseload standards imposed by the state bar association. These standards are consistent with national trends. The standards set a maximum on the number of cases a lawyer can take in one year. The maximum caseload standard represents the threshold, after which a public defender is presumed to be providing ineffective assistance of counsel. If a lawyer is required to represent someone after the point which the lawyer is ineffective, the lawyer risks a professional ethics violation, the criminal case against the defendant can be overturned on appeal (at great cost and emotional expense to the county and victims), and the County and SCPDA can become civilly liable. Civil liability is a very real prospect. In the past 12 years there have been at least three civil cases in Washington alleging ineffective assistance against an agency invoking civil liability

EXHIBIT # 2

LOG NUMBERS

BGT. \_\_\_\_\_, 1/27/21 CEO 20071092 \_\_\_\_\_, 1/27/21

FILE ORD 21-009 EXECUTIVE/COUNCIL APPROVAL FORM

MANAGEMENT ROUTING:

EXECUTIVE            Dave Somers  
EXEC. DIR.            Ken Klein  
DIRECTOR/ELECTED            Nathan Kennedy *NK*  
DEPARTMENT            Finance  
DIV. MGR.            Brian Haseleu  
DIVISION            Budget  
ORIGINATOR            Vanessa de Salome`  
DATE 1/21/2021            X3855

TO: COUNCIL CHAIRPERSON:  
SNOHOMISH COUNTY COUNCIL

EXECUTIVE RECOMMENDATION:  
 Approve \_\_\_\_\_ No Recommendation  
 Further Processing  
 Requested By \_\_\_\_\_

**Ken Klein** Digitally signed by Ken Klein  
Date: 2021.01.28 14:54:06 -08'00'  
Executive Office Signature  
CEO Staff Review            MG 1/27/2021  
Received at Council Office            ALC 3:18 PM 1/28/2021

DOCUMENT TYPE:

BUDGET ACTION:  
 Emergency Appropriation  
 Supplemental Appropriation  
 Budget Transfer  
 CONTRACT:  
 New  
 Amendment  
 GRANT APPLICATION  
 ORDINANCE  
 Amendment to Ord. # \_\_\_\_\_  
 PLAN  
 OTHER

DOCUMENT / AGENDA TITLE:

Request for Emergency Appropriation in the 2021 Budget in General Fund 002

APPROVAL AUTHORITY:

EXECUTIVE \_\_\_\_\_ COUNCIL   
CITE BASIS Charter 6.85

HANDLING: NORMAL \_\_\_\_\_ EXPEDITE  URGENT \_\_\_\_\_ DEADLINE DATE \_\_\_\_\_

PURPOSE:

Appropriation authority for Dept 32 Office of Public Defense to provide expenditure authority for unanticipated costs associated with continuing caseload increases and backlogs attributed to the covid-19 pandemic

BACKGROUND:

Motion 20-537 approved the 2021 contract with the Public Defenders Association (PDA). The contract needs to be amended to allow the hiring of 3 additional Felony Attorneys (2 Felony Attorneys and 1 Felony Attorney Supervisor) to maintain compliance with the WA State Bar Association (WSBA) caseload standards. The Covid-19 pandemic has caused a backlog in cases being completed and there is also an increase in the number of serious (serious cases are Class A felonies, Class B violent felonies, and felony sex offenses cases) being prosecuted; together these two factors have caused the need to hire these additional attorneys at a cost of \$444,076 in 2021. The County is at risk when caseload standards are not in compliance because cases could be reversed on appeal and/or SCPDA/OPD could get sued by their clients or lawyers for failure to abide by caseload standards.

**FISCAL IMPLICATIONS:**

| EXPEND: FUND, AGY, ORG, ACTY, OBJ, AU | 2021      | 2ND YR | 1ST 6 YRS |
|---------------------------------------|-----------|--------|-----------|
| 002.5321274107 Felony Attorney Fees   | \$445,000 |        |           |
| TOTAL                                 | \$445,000 |        |           |

| REVENUE: FUND, AGY, ORG, REV, SOURCE | 2021       | 2ND YR | 1ST 6 YRS |
|--------------------------------------|------------|--------|-----------|
| 002.3169900800 Fund Balance          | -\$445,000 |        |           |
| TOTAL                                | -\$445,000 |        |           |

**DEPARTMENT FISCAL IMPACT NOTES:**

**BUDGET REVIEW:** Analyst SND Administrator NK Recommend Approval

**CONTRACT INFORMATION:**

ORIGINAL \_\_\_\_\_ CONTRACT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_  
 AMENDMENT \_\_\_\_\_ CONTRACT # \_\_\_\_\_ AMOUNT \$ \_\_\_\_\_

**CONTRACT PERIOD:**

ORIGINAL Start \_\_\_\_\_ End \_\_\_\_\_  
 AMENDMENT Start \_\_\_\_\_ End \_\_\_\_\_

**CONTRACT / PROJECT TITLE:**

**CONTRACTOR NAME & ADDRESS (City/State only):**

**APPROVED:**

RISK MANAGEMENT Yes N/A No \_\_\_\_\_

COMMENTS \_\_\_\_\_

PROSECUTING ATTY - AS TO FORM: Yes See Ord. No \_\_\_\_\_

**OTHER DEPARTMENTAL REVIEW / COMMENTS:**

**ELECTRONIC ATTACHMENTS :**

G:\ECAF\Council\20071092 ECAF  
 G:\ECAF\Council\20071092 Ordinance

**NON-ELECTRONIC ATTACHMENTS:**



**ORDINANCE  
INTRODUCTION SLIP** SNOHOMISH COUNTY COUNCIL

TO: Clerk of the Council

EXHIBIT # 3  
FILE ORD 21-009

TITLE OF PROPOSED ORDINANCE:

RELATED TO THE 2021 BUDGET; MAKING AN EMERGENCY APPROPRIATION IN GENERAL FUND 002 TO PROVIDE EXPENDITURE AUTHORITY FOR UNANTICIPATED COSTS IN THE OFFICE OF PUBLIC DEFENSE

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Stephanie Wright 2/2/2021  
Councilmember Date

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Clerk's Action: Proposed Ordinance No. 21-009

Assigned to: Committee of the Whole Date: 2/8/2021

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**STANDING COMMITTEE RECOMMENDATION FORM**

The following action item was considered by Committee of the Whole  
(name of Committee)

on 2/16/2021. By a vote of 4 Yeas and 0 Nays, the  
(date)

Committee makes the following recommendation:

- Move to ~~Council to schedule public hearing~~ Public Hearing on March 3, 2021 at 10:30 a.m.
- Move to Council as amended to schedule public hearing
- Move to Council with no recommendation

**This item should/should not be placed on the Consent Agenda.**  
(Consent agenda may be used for routine items that do not require public hearing and do not need discussion at General Legislative Session)

**This item should/should not be placed on the Administrative Matters Agenda**  
(Administrative Matters agenda may be used for routine action to set time and date for public hearings)

\_\_\_\_\_  
Committee Chair