



# E - NEWSLETTER

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ISSUE: 4

## INSIDE THIS ISSUE:

[Stepping up  
the pace for a  
City client—  
Pages 2, 3](#)

[CAO helps ex-  
pedite Mental  
Health Court  
cases—Page 4](#)

[CAO Photos—  
Page 5](#)

[Events and  
News Stories—  
Page 6](#)

## Legislature models DWLS-3 reform on Seattle policy

Soon after taking office City Attorney Pete Holmes implemented a measured approach to prosecuting the crime of DWLS-3 (Driving While License Suspended in the Third Degree) because the law criminalized poverty by subjecting those who cannot afford to pay tickets to criminal sanctions. Now Seattle pursues only those serious offenders who pose a danger to the community, which saves about \$212,000 a year and has curtailed an inherently discriminatory practice.

"As a prosecutor, I believe I must advocate for changes to laws I find inappropriate to prosecute," Holmes said.

At the urging of the City of Seattle and through its education efforts in Olympia, the Washington Legislature passed E2SSB 6284, based on the Seattle reform, and Gov. Chris Gregoire signed it on March 23. The bill's fiscal note estimates that the state Department of Licensing would generate roughly \$1 million in additional revenue per year, and that local jurisdictions could save up to \$36 million.

"Those local savings could be used to fund more pressing public safety efforts in communities," Holmes said. In addition, thousands of working poor people will avoid having their licenses suspended. He referred to Michelle Alexander's recently published book, "The New Jim Crow," which states: "Adding to the insanity, many states suspend driving privileges for missed debt payments, a practice that often causes people to lose employment (if they had it) and creates yet another opportunity for jail time: driving with a suspended license."

"Reforming DWLS-3 will end debtor's prison and the criminalization of a person's inability

CONTINUED PAGE 2

CONTINUED FROM PAGE 1

to respond to and pay a traffic ticket," Holmes said.

Under the new law, failure to respond or appear for a traffic hearing and pay a ticket for a non-moving violation will no longer make a person a criminal. Instead, it will be a civil judgment subject to collections, garnishment and property lien procedures.

DWLS-3 charges will still always be filed when:

- offender fails to furnish proof of treatment of progress in a chemical dependency program.
- offender fails to comply with provisions regarding uninsured accident.
- offender is suspended due to DWLS-2 and was then eligible to have license reinstated but did not.

There is no correlation between the failure to pay



Governor Christine Gregoire signs Senate Bill 6284.

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City Attorney Pete Holmes, far left, and CAO Chief of Staff Darby DuComb (to Holmes' left) were present March 23 when Gov. Gregoire signed the bill reforming DWLS-3 policies. (Photo courtesy of the Washington State Senate)

and public safety. "[D]rivers suspended for non-driving reasons posed the lowest traffic safety risk among the suspended driver groups with a risk not much higher than validly-licensed drivers," according to a federal report in 2009.

*Reasons for Drivers License Suspension, Recidivism and Crash Involvement Among Drivers with Suspended/Revoked Licenses,*

USDOT National Highway Traffic Safety Administration (NHTSA), p. 1 (2009) <http://www.nhtsa.gov/DOT/NHTSA/Traffic%20Injury%20Control/Articles/Associated%20Files/811092.pdf>

DWLS-3 bill: <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Senate%20Passed%20Legislature/6284-S2.PL.pdf>

## Stepping up the pace for a City client

City Attorney's Office employees are accustomed to working collegially on behalf of City clients. Sometimes the pace ratchets up several notches, as was the case when a former Seattle Public Utilities engineer was arrested and criminally charged for allegedly pilfering almost \$1.1 million in City funds.

Assistant City Attorney Katrina Kelly, who had been advising SPU for months as Seattle police investigated Joseph Phan, called

CONTINUED PAGE 3

CONTINUED FROM PAGE 2

on more than a dozen colleagues as she devised civil strategies to recover the money. (<http://www.seattlepi.com/local/article/Ex-city-worker-sued-over-missing-1-million-3402814.php>) "It was a huge team effort inside our office," said Kelly, who works in the Civil Division's Employment Section. Kelly praised these CAO employees for assisting her.

Attorney Vanessa Lee from Torts, with prior experience with employee theft / embezzlement, "was able to bring a lot of expertise to the table. She also kindly volunteered to sign onto the pleadings, so that I wasn't alone! It is so fun to have a case that crosses section lines!" Kelly said.

Attorney Thom Castagna from Government Affairs "has a vast array of collections experience and was able to explain the ins and outs of lis pendens (amongst other things!) and served as a cautionary voice. He also knows way more about title searches and real estate law than I do."

Attorney Beth Gappert from the Criminal Division, with expertise with police seizure work, "was able to assist us in understanding the interface between the criminal and civil matters."

Torts Section Director Marcia Nelson is "a fountain of knowledge about insurance law, and came up with some creative ideas for having insurance pay some of our legal costs."

Paralegal Brenda David, who works with Castagna, performed "a critical service by locating Mr. Phan's six parcels of real estate."

Paralegal Peter McNeill from Torts assisted by drafting third-party subpoenas. Paralegal Debby Trudeau from Employment stepped in on short notice to assist.

Legal Assistant Kim Fabel from Employment "enthusiastically stepped outside her comfort zone of employment law to take on this unusual case, which seems to defy the section boundaries in our office." Helping Fabel was Danielle Tovar, a temporary legal assistant in Employment.

Communications Director Kimberly Mills "provided invaluable assistance by managing the press angle (and showing us where the jail courtroom was)." Civil Division Director Jean Boler "is always wise and who is the best mentor I will ever have."

Attorney Gary Smith from the Government Affairs Section gave "sage advice regarding the Phan-related Public Records Act requests." Last but not least, Kelly credited City Attorney Pete Holmes for "providing me with wide latitude to manage the case, and who assisted in our strategic discussions by drawing on his expertise in bankruptcy law."

## CAO helps expedite Mental Health Court cases

On Aug. 31, 2011, Mental Health Court (MHC) stakeholders met to discuss the increased delay in completing initial competency evaluations for defendants in Seattle Municipal Court. The stakeholders included the MHC judge and representatives from the City Attorney's Office, the Associated Counsel for the Accused (the public defense agency holding the MHC contract), and Western State Hospital (WSH). Despite a state statute, RCW 10.77, that sets a timeline to complete an initial forensic evaluation within 15 days for in-custody defendants, the timeline was often stretched to 21 days. The delay was caused by both an uptick in requests for evaluations and WSH's reduction in staff. In early October 2011, the discussion resumed at the King County/WSH Collaborative Meeting. Joining the conversation were representatives from King County Crisis and Commitments and the King County Prosecutor's Office.

The stakeholders recognized delay causes financial cost to the court but also a destabilizing impact on the defendant. Other than WSH's goal of becoming fully staffed, the discussion centered on the amount of time required to complete an evaluation that contained all the statutory requirements. The parties decided that a *truncated* evaluation would shorten the time needed to complete an evaluation. The parties agreed that under certain circumstances some sections of the initial competency evaluation could be waived if 1) the current charge was a non-serious offense; 2) the client had been evaluated by WSH in the past; 3) the competency issue was "clear"; 4) The City and defense agreed that the case is appropriate for a truncated report; 5) the client was in custody; and 6) the case would automatically be referred to the Designated Mental Health Professional (DMHP) for evaluation for civil commitment under RCW 71.05.

The parties decided that under those circumstances, the dangerousness assessment, i.e. "whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security," could be waived as it is an analysis of future dangerousness. The safeguard would be the requirement that a truncated evaluation would always require a referral to the DMHP. When a defendant is referred to a DMHP for potential civil commitment the question is whether the person is imminently dangerous. Therefore, as a practical matter this dangerousness assessment may not be that useful. A second safeguard was the including in the order a directive for WSH to attach the last full evaluation conducted on the defendant.

On Nov. 10, 2011, the first case that met the criteria was identified. The court ordered an initial forensic evaluation on that date. Rather than a 21-day turn around, the court received the completed truncated evaluation on Nov. 14, 2011 -- a four-day turnaround!

This procedure has been used when procedurally appropriate and in every case the defendants have been processed in an expeditious manner.



**SEATTLE CITY ATTORNEY'S OFFICE**  
PETER S. HOLMES, CITY ATTORNEY



Totem pole honors slain woodcarver John T. Williams.

[http://seattletimes.nwsources.com/html/localnews/201706106\\_woodcarver27.html](http://seattletimes.nwsources.com/html/localnews/201706106_woodcarver27.html)



City Attorney Pete Holmes and City Councilmembers Sally Bagshaw and Jean Godden discussed mutual anti-discrimination efforts with an Israeli LGBTQ delegation on March 16.

More than 120 CAO employees came together March 14 for the State of the Office meeting at City Hall. Right, the City Attorney spoke about the office's accomplishments in the past year. Below, Paralegal Sara O'Conner-Kris outlined new projects for the CAO's Race and Social Justice Initiative. From left, Pete Holmes, Criminal Division Chief Craig Sims and Paralegal Angelica Germani, all RSJI Change Team members.



## EVENTS

**4-26-12** Pete will participate in a panel discussion of the state's Public Records Act and privacy issues at the spring conference of the Washington State Association of Municipal Attorneys at the Skamania Lodge in Stevenson, WA. More information at <http://www.wsama.org/>

**5-4-12** Pete will receive the *Golden Door Award* "for furthering the cause of immigrant and refugee rights on a national, state, or local level" from the Northwest Immigrant Rights Project at its 28<sup>th</sup> anniversary celebration at Sky Church at EMP Museum in Seattle. More information at <http://www.nwirp.org/>

**5-10-12** Pete will discuss Michelle Alexander's book, "The New Jim Crow," in a class, "Race and the Law," taught by CAO Chief of Staff Darby DuComb at the University of Washington Law School from 3:30 to 5:30 p.m.

**5-22-12** Pete will receive an award from Washington CeaseFire at the organization's 25<sup>th</sup> annual luncheon at 11:30 a.m. at the Washington Athletic Club in Seattle. More information at <http://washingtonceasefire.org/>

## LINKS TO NEWS STORIES:

**Jury acquits Seattle police officer of off-duty assault in Ballard**

[http://seattletimes.nwsourc.com/html/localnews/2017810211\\_haynestrial22m.html](http://seattletimes.nwsourc.com/html/localnews/2017810211_haynestrial22m.html)

**Ex-city worker sued over missing \$1 million**

<http://www.seattlepi.com/local/article/Ex-city-worker-sued-over-missing-1-million-3402814.php>

**Demolition of the Fremont Inn on Aurora Avenue**

<http://blog.seattlepi.com/seattle911/2012/03/02/video-demolition-of-the-fremont-inn-on-aurora-ave/>

**Judge allows release of disciplined Seattle police officers' names**

[http://seattletimes.nwsourc.com/htmllocalnews/2017616694\\_spdnames29m.html](http://seattletimes.nwsourc.com/htmllocalnews/2017616694_spdnames29m.html)

**Why I'm suing James Egan**

<http://slog.thestranger.com/slog/archives/2012/02/22/why-im-suing-attorney-james-egan>

**City asks Supreme Court not to hear taser case**

[http://seattletimes.nwsourc.com/html/localnews/2017560360\\_taser22m.html](http://seattletimes.nwsourc.com/html/localnews/2017560360_taser22m.html)

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The Seattle City Attorney's Office is committed to providing the City of Seattle with the highest caliber legal advice to help protect the health, safety, welfare, and civil rights of all.

With more than 90 lawyers, the City's Law Department is one of the largest law offices in Seattle and is the third largest public law office in the state.

The City Attorney's Office is made up of three divisions:

**The Civil Division** represents the City in lawsuits and advises City officials as they develop programs, projects, policies, and legislation. The sections within the Civil Division include torts (claims), governmental affairs, land use, environmental protection, labor and employment, and contracts/utilities.

**The Criminal Division** represents the City in prosecuting traffic infractions, misdemeanors, and gross misdemeanors in Seattle Municipal Court. The types of cases prosecuted by the Criminal Division include driving under the influence, traffic infractions, domestic violence, theft, assault, and trespassing.

**The Administration Division** staff provide budgeting, accounting, human resource, clerical and information technology services for the City Attorney's Office.



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