



## Committee of the Whole

### STAFF REPORT

|                      |   |              |                            |
|----------------------|---|--------------|----------------------------|
| <b>Agenda Item:</b>  | 5-7   | <b>Name:</b> | Patrick Hamacher, Amy Tsai |
| <b>Proposed No.:</b> | 2013-0108<br>2013-0109<br>2013-0162   | <b>Date:</b> | April 3, 2013              |
| <b>Invited:</b>      | <ul style="list-style-type: none"><li>• Dave Chapman, Director, Office of Public Defense</li><li>• Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)</li><li>• Sheryl Willert, Attorney, Williams, Kastner and Gibbs (Special Deputy Prosecuting Attorney for public defense legal advice)</li><li>• Tim Filer, Attorney, Foster Pepper PLLC (outside counsel on <i>Dolan</i> litigation)</li></ul> |              |                            |

### SUBJECT

Two ordinances reorganizing the Office of Public Defense and providing funding to finance the reorganization, and a motion requesting an interim plan.

### SUMMARY

As a result of the Dolan lawsuit, the County Executive has proposed changes to the structure for county public defense services. Currently, the County contracts with four non-profit public defense organizations. The Executive's proposal would create a new County Department of Public Defense.

Proposed Ordinance 2013-0108 would create the Department of Public Defense and the Public Defense Advisory Board.

Proposed Ordinance 2013-0109 would provide a supplemental appropriation of \$4.9 million to various capital projects and operating budgets to effectuate the transition to a new model for provision of public defense services.

Proposed Motion 2013-016G would notify the executive that the County Council is unlikely to make a permanent decision regarding the delivery of public defense services on the timeline requested by the Executive. It further requests that the Executive transmit legislation to the County Council to cover the transition from the current model to the new model proposed by the Executive. Even if the County Council adopts the

model as proposed by the Executive, the current plan is to move to the final state over a transition period.

## **BACKGROUND**

**The following background is a condensed summary of the background on indigent defense, the Dolan lawsuit, and the proposed ordinances from a previous staff report in this Committee on March 20, 2013. Additionally, a proposed motion is discussed below.**

Every citizen has a constitutional right to legal representation when accused of a matter where loss of liberty is possible (6<sup>th</sup> Amendment of U.S. Constitution; Article 1, Sec. 22 of Washington State Constitution). Effective legal representation for indigent persons is also required by state law (RCW 10.101.005). The county's public defense system is codified at K.C.C. Chapter 2.60.

Today, King County contracts with four private, nonprofit corporations for the provision of most public defense services. In January 2006, a class action lawsuit was filed against King County, alleging that the employees of these agencies were county employees and that King County had a duty to enroll them in the Public Employees' Retirement System (PERS). In a ruling upheld by the Washington State Supreme Court, the trial court held that the nonprofits were "arms and agencies" of King County, making the employees of those nonprofits employees of King County for purposes of PERS enrollment.

In April 2012, King County began making employer contributions to PERS for those employees and the employees' PERS contributions have been deducted from the salaries paid to them by each public defender organization. In March 2013, the Council approved a settlement agreement between King County and the Plaintiffs which must now go through a judicial approval process before it can become effective. The settlement agreement would recognize the plaintiffs as county employees on July 1, 2013, with full benefits, but leaves up to King County how public defense would be structured.

## **Proposed Ordinance 2013-0108**

In response to the Court ruling and settlement, the County Executive has proposed a public defense delivery model (Proposed Ordinance 2013-0108) that proposes the creation of a Department of Public Defense. The County Executive has proposed organizing the Department into two major Divisions, one that would handle the bulk of cases and calendar assignments and another that would primarily be designed to handle conflict cases.

A draft organizational chart of the proposed two-division model is attached as Attachment 4. There would be a department director, two chief deputies and two assistant chief deputies. Each of the two divisions would have a separate pool of attorneys, supervisors, paralegals, investigators, social workers, and other support staff. The first division would handle 60 percent of cases and the second division would

handle 30 percent (tending to be the more complex cases such as multi-defendant felonies that have a greater likelihood of being conflicted out by the first division), with an estimated 10 percent of cases needing to be handled by an assigned counsel panel when a case is conflicted out by both divisions.

The Department Director would, among other things, ensure that the Department employs the needed expertise to ensure effective delivery of defense services, ensure the American Bar Association "Ten Principles for a Public Defense System" guide the development, management and department's standards, and follow State Supreme Court caseload standards.

Proposed Ordinance 2013-0108 would also establish a Public Defense Advisory Board to make recommendations to the department director on department policies, operations and matters of budget. The advisory board would issue biannual reports, including a review of the Executive's proposed annual public defense budget.

The advisory board would consist of seven members nominated by the County Executive and confirmed by the County Council, including a member of the state bar (WSBA), the King County bar (KCBA), a minority bar association, a retired King County court judge, a law school faculty member from the state, and two members from community organizations serving indigents in King County.

#### Proposed Ordinance 2013-0109: Supplemental Budget Request

There is also a supplemental budget request for transition costs to effectuate the proposed public defense model. Proposed Ordinance 2013-0109 would provide a supplemental appropriation of \$4.9 million from the General Fund (at a net cost of \$3.1 million after removing the double-counting of an internal transfer from the General Fund to some of the projects).

The requests include the following:

- \$499,000 onboarding personnel including 20% contingency
- \$124,000 supplies including 20% contingency
- \$755,000 vehicle purchase
- \$780,000 computers
- \$749,000 case management system
- \$250,000 facilities planning and tenant improvement contingency

#### Proposed Motion 2013-0162: Transition Plan

Proposed Motion 2013-0162 recognizes that the process of implementing a new public defense system will take time in order to do it in a thoughtful manner that protects individuals' constitutionally guaranteed right to assistance of counsel. Proposed Motion 2013-0162 requests the Executive to work with the Council to develop an interim plan to cover the timeframe between June 30, 2013 and full implementation of an ordinance organizing the structure of public defense services. The motion further notes that full implementation may take six months or longer.

## **ANALYSIS**

This is the second hearing on the two proposed ordinances and the first hearing on the proposed motion. The proposed ordinances are not yet ready for action.

On March 20, 2013, Council staff identified six main areas of analysis that will be fleshed out over the course of several Committee of the Whole briefings. Those areas include:

- 1) Alternatives – Are there alternative models that should be considered?
- 2) Timeframe – Is the timeframe for migration reasonable?
- 3) Independence – Does the proposed model adequately address the issue of independence of the public defense system?
- 4) Conflicts – Is the proposed model sufficient to handle case conflicts?
- 5) Annualized budget – Is the proposed departmental budget and FTE request reasonable? (Particularly given the unknown status of outside contracts)
- 6) One-time budget – Are the supplemental requests for one-time costs reasonable?

This staff report focuses on the **first three issues**, 1) alternatives, 2) migration timeframe, and 3) independence. Proposed Motion 2013-0162 is related to the issue of the migration timeframe and will be discussed further in that section.

In regards to the other three analysis areas, a legal expert will be assisting the county's attorneys in providing conflicts analysis; it is a major topic that will be covered in a subsequent Committee briefing. Budget requests may need some adjustments as details of the OPD structure are resolved, so they will be covered together at a later date. However, some budgetary discussion occurs in the context of the Executive's proposed timeframe.

### Alternatives to the Executive's Proposed Model

The analysis of alternative models for the structure of public defense services involves consideration of policy, legal and financial issues. For purposes of this analysis, an alternative model is one that has a different underlying structure than the Executive's proposed model, as opposed to slight variations off of the proposed model that may arise as a result of further analysis on the other issues.

Note that the method of selection of the chief Public Defender is discussed separately in the Independence section below.

Analysis is being conducted on the legal and practical viability of alternative models after Dolan. The alternative models being considered include the following:

- Independent contractors – Could the county enter into a contract with private attorneys, law firms, bar associations, or non-profit organizations to provide representation to indigent defendants, where the employees of those entities

would not be county employees? Prior to Dolan, the current system of nonprofit agencies providing defender services under contract with the county and reporting to an independent board was viewed as an independent contractor model by the county.

- Public defense services by RFP – Could the county contract for public defense services by going out to bid for an annual contract? The Seattle Municipal Court issues Requests for Proposal each year to handle its misdemeanor cases. Presently, the Associated Council for the Accused holds the primary SMC contract, with conflicts handled by the Northwest Defender Association and The Defender Association, and any remaining cases handled by a Conflicts Attorney Panel.
- Public Defender District – State law (RCW 36.26) allows the count yto create an office of public defense for the district. The public defender is appointed by a committee consisting of a superior court judge, a practicing attorney and a member of the county commission or council. Benton-Franklin County is one example where this is done.
- Public Corporations – State law (RCW 35.21.730) authorizes cities and counties to create public corporations to perform public functions with liabilities limited to the assets and properties of the corporation. The Cultural Development Authority, 4Culture, is an example of a county-created public development authority. It has an Executive Director, is governed by a Board of Directors, and reports annually to the Council. 4Culture is funded largely from hotel-motel tax revenues.
- Nonprofits with joint-employees – Could King County continue to operate under its current public defense system, but treat public defense employees as joint-employees for purposes of complying with Dolan? It is unclear at this time precisely what such “joint employment” status would mean.

The first analysis required for these alternatives is whether they are legally feasible after Dolan. Even if legally possible, the alternative must be practically possible to implement. Any legally, practically possible alternative must also be able to be structured in a way that can achieve the desired principles of public defense, including independence, ability to handle case conflicts, and ability to provide effective assistance of counsel. The legal analysis of these alternatives will be covered in Executive Session, and is not included in this staff report.

#### Timeframe for Migration

Proposed Ordinance 2013-0108 does not provide a timeframe for implementation. However, the Executive's plan calls for attorneys and staff to remain in their current locations on July 1, 2013 and to transition to two divisions over the course of six months to a year. Executive staff have provided Council staff with a more detailed migration plan that identifies activities that they anticipate would need to occur prior to July 1,

immediately after July 1, and over the next six months to a year in order to implement the Executive's proposed model.

For purposes of this analysis, activities can be divided into 1) activities that must occur in preparation for the July 1 employee recognition date, 2) general activities that must occur in preparation for a new public defense structure in response to Dolan, regardless of the form the Council might approve, and 3) specific activities that must occur in preparation for the Executive's proposed model.

As will be explained further below, the Executive's more detailed timeline shows that actions in the first category appear to be largely on schedule. Actions in the second category have commenced and include the hiring of TLT and FTE staff whose funding is proposed as part of Proposed Ordinance 2013-0109 which is still awaiting Council action, and actions in the third category generally appear to be held pending Council approval of a public defense structure with some possible exceptions that can be traced to uncertainty regarding what public defense might look like on July 1.

### *July 1 Recognition Activities*

In order to recognize public defense employees as county employees with full benefits on July 1, there are tasks being performed by the Human Resources Division (HRD) and the Benefits, Payroll and Retirement Operations Section (BPROS) on a range of personnel topics related to payroll and benefits. These include tasks such as assigning employees to the county's classification system, creating access cards, new employee orientation and PeopleSoft training, and loading vacation and sick leave into the county payroll system. Some aspects may occur after July 1; for example, the agencies will likely complete their payroll processing for June after July 1 which would affect the transfer of leave time into the county payroll system. However, the process to get the public defense employees paid salaries and benefits on the county system appears to be on track.

Staff – There are two FTE expected to be hired between April and June to assist with some of these payroll and benefits activities, including a clerical payroll staff and a human resources associate. Although they would be hired out of OPD's existing appropriation authority, the intent of OPD would be to seek funding for these positions from the 2013-0109 supplemental request as part of the personnel on-boarding request.

### *General Preparation Activities*

Included in the category of general preparation activities are those activities that appear necessary for preparing for any new public defense structure. These include tasks such as labor negotiations with the public defense employees, discussions with the defender agencies on transitioning employees, work on the budget system to incorporate new positions, and time spent planning and tracking the migration tasks.

Staff – There are four TLTs who have been brought on board to assist with the transition and transition planning. These include a communications specialist, a human resources labor relations person working on labor negotiations, and two special project

managers. Although they were hired out of OPD's existing appropriation authority, the intent of OPD would be to seek funding for these positions from the 2013-0109 supplemental request as part of the personnel on-boarding request.

#### *Preparations for Executive's Proposed Model*

Executive staff are also taking steps that to varying degrees assume Council adoption of a model similar to the Executive's proposed structure. This is to be expected, as a new public defense structure is a massive undertaking that will take time. The issue for analysis is whether any steps are being taken down a path, prior to Council's selection of a public defense model, that could constrain the ability of the Council to make a thoughtful decision. Simultaneously, the Council does not wish to stall any action where delay would have adverse consequences to the county.

Some steps such as exploration of facility space and work by King County Information Technology (KCIT) on computer equipment needs of defense employees are based on an assumption that on July 1 the county will have a transition plan that includes having employees remain in their current office spaces, potentially using some of their current equipment and supplies, while working on currently open or new cases. It is important to recognize that availability will depend on the operational intentions of the nonprofit agencies on July 1. Depending on when those intentions are finalized, OPD may need to be working on a Plan B for space and equipment. Thus far, OPD has only expended staff resources on these issues but not acquisition money. Space planning, tenant improvements and equipment are part of the Proposed Ordinance 2013-0109 supplemental request.

Another action currently being undertaken by KCIT is exploration of a uniform case management system (which might be all employees using one system or separate defender units using similar applications with a common interface). Again, until the Council has adopted a public defense structure, the county's case management needs are not fully known. However, it is logical for the county to have a uniform case management system amongst its public defense employees and to be working on streamlining the current system. The Spangenberg Group back in 2000<sup>1</sup> commented on the inefficiency created by the lack of organized caseload data amongst the defender agencies. Also, since the writing of the March 20 staff report, the plans for the case management system now include keeping data in four separate databases, one for each of the current agencies' data, with each agency able to test the system prior to July 1 for security. This will help preserve the data integrity of the current systems and allows more time for development of a long-term solution to meet the needs of whatever public defense structure is adopted by the Council. Council staff will continue to monitor the expenditure of KCIT staff resources and development of the short-term solution; the costs are included in the Proposed Ordinance 2013-0109 supplemental request. Some of the expenditures on a short-term solution are for developments that can be applied towards the long-term solution. The net cost of the KCIT supplemental request will be discussed when Proposed Ordinance 2013-0109 is covered in greater detail in subsequent staff reports.

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<sup>1</sup> King County Public Defense Study Final Report

Staff – There are four FTE positions for on-boarding that have been identified by OPD to have an anticipated hiring date of between April and June that relate more directly to implementation of the Executive's proposed model. These positions include the two division directors for the Executive's proposed public defense structure, a Project Program Manager II for caseload and conflicts data queries, and a public disclosure officer. OPD states that these positions will not be hired in advance of Council action on Proposed Ordinance 2013-0108.

### ***Unresolved Issues and Proposed Motion 2013-0162***

Although OPD has a plan for achieving implementation of the Executive's proposed model in a six to 12 month timeframe, it is only a plan for moving to the Executive's proposed model. This is necessary on OPD's part because this is the proposal that the Executive has put before the Council, but it is not sufficient. It is clear that a successful migration of public defense will require clear communication with and participation by the public defense agencies in the process. The results of that dialogue may well affect what model the Council ultimately adopts (subject, of course, to legal constraints imposed by Dolan). Because many implementation issues are presently unresolved, it is critical that preparatory work for July 1 (the employee recognition date but also the end of current defender agency contracts) be able to handle other possible scenarios.

With less than 90 days left before July 1, there are a large number of issues remaining to resolve, including, for example, the following:

- Labor negotiations for pay and layoff process,
- How will representation for existing cases be administered – through the defender agencies or through a new county department,
- Whether the defender agencies will continue to exist and use their current equipment and office space, and in what capacity with what employees,
- How many employees will join the county or choose other employment alternatives or retirement<sup>2</sup>,
- Who will continue the external contracts such as with the tribes and with Seattle Municipal Court, which will have a sizeable impact on the number of employees needed after July 1, and how will the transition impact Seattle's public defense service delivery
- What model will be approved by Council, and its implications for how the Public Defender will be hired and how and where services will be rendered, and
- How the selected model will impact the defender agencies' non-county activities, including social justice programs, described below.

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<sup>2</sup> At the last committee briefing, Councilmembers asked about retirement numbers. There are an estimated 16 defender employees who will be eligible for full retirement, including 2 administrative, 6 attorneys, 3 clerical, 3 investigators, 1 paralegal and 1 unknown job class. There are a total of 54 employees who meet the PERS retirement criteria for those 55 or older. However, to the extent that they receive higher county pay on July 1, they might have an incentive to stay longer to increase their retirement amount which is an average of a 60 month period.

The county will need a plan that ensures first and foremost the uninterrupted continuation of effective assistance of counsel for accused persons. Presently, the Executive's migration plan identifies pressure points of action items that need to be resolved prior to July 1, but does not identify a back-up plan if some events do not occur within the necessary timeframe.

It is worth noting that King County's transition plan and ultimate public defense structure will impact not only King County but the future of all of the other services currently provided by the public defense agencies. For instance, in addition to the Seattle Municipal Court misdemeanor contracts supported by 49 staff, there is a state Sexually Violent Predator contract supposed by 14 staff. The Society of Counsel Representing Accused Persons (SCRAP) has contracts with about ten tribes for legal advice. SCRAP also has an annual contract for Project ROYAL (Raising Our Youth as Leaders) with DCHS/CSD to provide prevention and intervention services to at-risk youth. The Defender Association does nationally recognized work with the grant-funded Racial Disparity Project that seeks to reduce racial imbalance in the criminal justice system. Staff will continue to analyze the impact of the county's actions on these other systems and the options for minimizing adverse impacts.

Proposed Motion 2013-0162 recognizes that the process of implementing a new public defense system will take time in order to do it in a thoughtful manner that protects individuals' constitutionally guaranteed right to assistance of counsel. The motion also highlights the Council's commitment to be inclusive and collaborative with the public defense agencies, employees and other stakeholders. Proposed Motion 2013-0162 requests the Executive to work with the Council to develop an interim plan to cover the timeframe between June 30, 2013 and full implementation of an ordinance organizing the structure of public defense services. The motion further notes that full implementation may take six months or longer.

### Independence

**Independence** of public defense is the first of the ABA Ten Principles for a Public Defense System ("ABA principles"). As described in the March 20 staff report, the ABA principle of Independence for public defense is that "the structure of the system should provide a degree of independence from external influence in its operations."

The principle states (breaks added):

- The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.
- To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.

- Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.
- The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.

On March 20, Councilmembers asked for greater clarification on the principle of independence and what it means to be free from political influence. This staff report further explores the meaning of independence and evaluates the ability of various chief defender models to achieve it.

In determining how independence could be achieved for public defense in King County, this analysis considers the history of King County public defense and the issues it has faced as guidance for how independence could be addressed. Public defense systems have dealt with the issue of independence in various ways, with varying degrees of success. Comparisons with other jurisdictions are difficult, because there are many different types of public defense systems in the country, each crafting a solution for independence based on the circumstances of that jurisdiction.

#### *What does "independence" mean?*

The principle of independence and freedom from political influence refers to the ability of a defense attorney to represent an indigent client effectively as dictated by their best professional judgment, without being subject to political pressures.<sup>3</sup> Political pressure can mean any pressure exerted by political bodies that inappropriately or adversely affects the delivery of effective public defense.

Political influences on case handling - One of the primary aspects of this principle is that cases should be managed at the administrator level and not be subject to influence by elected officials. In the national American Bar Association Standards for Criminal Justice, Standard 5-1.3 Professional Independence states that being free from political influence includes having the selection of lawyers for specific cases not be made by the judiciary or elected officials, but rather by the administrators of the public defense program.

As another example of a violation of independence, in 2005, the American Civil Liberties Union (ACLU) filed a class action against Grant County, Washington, for system-wide problems with ineffective assistance of counsel. The parties settled after the trial court ruled that defendants had a well-grounded fear of immediate invasion of the right to effective assistance of counsel. Under the settlement, the county agreed to reduce

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<sup>3</sup> As discussed in the March 20 staff report, The tenet that public defense should be free from political influence has its origins in ABA Standard 5-1.3 "Professional Independence", which is about "the integrity of the relationship between lawyer and client." At the heart of this principle is the idea that defenders must be "free to act on behalf of their clients as dictated by their best professional judgment" with the same freedom as a lawyer whom a person with sufficient means would be able to afford.

excessive caseloads, guarantee that public defense lawyers are qualified to handle serious felony cases, and provide adequate funding for investigators and expert witnesses. Lack of independence was one of the claims raised against Grant County because the prosecuting attorney participated in the negotiation of contracts for public defense and advised the county Board regarding the public defense system. This, the ACLU argued, created a disincentive for vigorous representation by public defenders with a contract at stake with the county.

These examples illustrate the concept that a lawyer-client relationship is independent when the attorney is free to represent a client to the best of his or her ability without having a conflict of interest due to pressures being exerted by a political body that has some control over the attorney's future or funding.

Ability to advocate for funding – One specific manifestation of political pressure that has received much stakeholder attention in King County is the ability of the chief defender to effectively lobby for funding. One of the tenets of the Independence principle is that "The public defense function, including the selection, funding, and payment of defense counsel, is independent." To be independent, a chief defender must have sufficient funds to "fund the full cost of quality legal representation for all eligible persons" (ABA Standard 5-1.6 "Funding"). In this standard it is emphasized that the funding power must not ever interfere with or retaliate against professional judgments made in the proper performance of defense services

#### *Models to Achieve Independence*

In order to achieve the two aspects of independence discussed above, a chief defender must be sufficiently insulated from political influences that he or she feels free to act in the best interest of public defense for indigent clients, without fear of inappropriate reprisal or being unduly swayed by conflicting incentives. Possible ways of promoting independence discussed below include 1) selection of the chief defender and/or oversight of public defense by a nonpartisan board, 2) appointing the chief defender to a fixed term removable only for good cause, or 3) electing the chief defender.

Of note, to put this discussion in context, similar issues of independence were raised over ten years ago in 2000 by a Public Defense Study Oversight Committee convened by the county to commission a study on public defense, which identified perceptions of a "lack of a strong policy voice to represent the views of the public defense function." Yet King County has a national reputation for having one of the most well-respected public defender services in the country.<sup>4</sup> Therefore, although very important, the issue of achieving independence is a matter of degree, and will have less of an impact on the effectiveness of service delivery than other decisions facing the Council, such as the overall selection of a public defense delivery structure. The preservation of independence is a much greater concern in jurisdictions with corrupt practices and majorly lacking internal controls; a problem which fortunately King County does not face. This is important to keep in mind, because when jurisdictions employ methods to

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<sup>4</sup> See, e.g., The Spangenberg Group. King County, Washington Public Defender Case-Weighting Study (2010).

achieve independence, the necessity and efficacy of the selected method depends in part on the needs of that jurisdiction.

If the Council were to approve the creation of an in-house public defense department, the King County Charter requires the Executive to appoint the chief officer (Charter 340.10) subject to confirmation by a majority of the Council (Charter 340.40). The chief officer would be an at-will position (Charter 340.60). Any of the alternatives below that established a different selection or termination procedure for a chief public defender would require a charter amendment.

Alternative Public Defense Models – Several alternative delivery models to the Executive's proposal were discussed above. The level of independence that is provided by these alternatives may require further staff analysis after the field has been narrowed to the legally and practically viable alternatives. However, in general the same principles of independence should apply to these entities – some measure of independence can be created to the extent that the chief defender has protections in the structure from fear of reprisal by the county's political bodies, such as by being accountable to a nonpartisan board. In King County's current system, the four public defense agencies are able to lobby the Council directly for funding the public defense budget.<sup>5</sup>

Appointed for a Term and Terminable for Cause - The ABA identifies employment security as essential for encouraging professional independence. ABA Standard 5-4.1 "Chief defender and staff" states that the selection of the chief defender should be based on merit, with the chief defender appointed for a fixed term of years subject to renewal. Further, neither the chief defender nor staff should be removed except for good cause.

As was noted in the March 20 staff report, under the Executive's model, the Public Defense Director, as the chief officer of an Executive department, is an at-will employee serving at the pleasure of the Executive (King County Charter 550, K.C.C. 3.12.010Y). Changing the position to a fixed term removable for good cause would require a charter amendment. The greater the specificity of permissible causes for termination, the more secure the chief defender's position would be.

It is worth noting that at least one stakeholder group has viewed at-will employment as sufficient for independence. The Public Defense Study Oversight Committee was convened by the county in September 1999, representing many elements of King County and Seattle criminal justice systems and governments. In a 2000 report of King County's public defense system,<sup>6</sup> the Committee "felt that it was unlikely that any County Executive would terminate the Director of Public Defense who was doing a good

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<sup>5</sup> The impact of those efforts on public defense delivery is a matter of some dispute. The Spangenberg Group, in a 2010 King County Case Weighting Study, surveyed respondents from various courts and areas of expertise. Some respondents felt that the lobbying efforts of the defender agencies affected the ability of OPD and the Executive to negotiate contracts with the firms. The defender agencies contended that their lobbying efforts helped to preserve public defense funding. Both, however, could be true.

<sup>6</sup> The Spangenberg Group. King County Public Defense Study Final Report (June 2000).

job, was a strong advocate for indigent defense and had the support of the commission." (The commission was a board that the Committee recommended be created for recommending names for appointment and acting in an advisory capacity, to be comprised of a Seattle mayoral appointee, two Executive appointees, and four county bar appointees, and including at least one person with client connections and a retired judge, but no active prosecutors, judges or public defenders.) The Committee expressed a desire to avoid an amendment to the county charter, which may have affected its opinion.

Oversight Board – The ABA Independence Principle states, "To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems." The ABA standards for criminal defense (Standard 5-1.3 Professional Independence) suggest the establishment of a board of trustees to oversee defense service delivery (selection of the chief defender and general policy responsibilities, not day-to-day operations such as hiring and promotional decisions). Such a board would ideally consist of mostly members of the bar, reflect the racial, ethnic and sexual composition of the client community, and have no prosecutors or judges.

As was noted in the March 20 staff report, the Executive's proposed Advisory Board does not in and of itself appear to meet the test of independence. It does not provide an insulating layer of protection to the chief defender because it is advisory only and does not have control over the selection or firing of the chief defender. Giving the Advisory Board selection and oversight responsibilities would bring the board more in line with the ABA recommendations for independence. If the Council were to create such a board to operate in conjunction with establishment of a new department of public defense, the selection authority would require a charter amendment.

Elected Chief Defender – The advantage of an elected official is that the official is then on par with the elected Prosecutor and can be a more effective advocate for funding and for prosecutor parity, which is also one of the ABA's ten principles. ABA's eighth principle, Parity of Resources with Prosecution and Equal Voice, states that the "defense and prosecution resources should be equal and reasonably compensated. Defenders should have an equal voice in efforts to improve the justice system."

However, the ABA notes that it may be more difficult, but possible, to achieve independence if the chief defender is elected or chosen by a political body such as a county council. Similarly, The Spangenberg Group has weighed in that "[e]lected public defenders would certainly not meet the standard of being independent from political influence."<sup>7</sup> The Executive's proviso report accompanying Proposed Ordinance 2013-0108 noted The Spangenberg Group's concerns that the process of running for office, raising money and campaigning makes it more difficult to make case decisions free from political influence.

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<sup>7</sup> The Spangenberg Group. The Indigent Defense System in Nebraska: An Update (Oct. 2004)

Councilmembers asked about other jurisdictions that elect a public defender. This is a difficult question due to the varying ways in which public defense is conducted in the United States. Out of 39 states that have statewide (or state-funded) public defender systems, two (Florida and Tennessee) have state-funded elected public defender offices.<sup>8</sup> Washington is one of 11 states where indigent defense funding is primarily a county responsibility. Thus, at the state level, elected public defenders are rare (but in Florida, for instance, the legislature created 20 independent publicly elected public defender offices, one for each judicial district).<sup>9</sup> At this time, staff do not know how common elected public defenders are at the local level. In Nebraska, 23 of the 38 counties, including most of the largest counties, have an elected public defender system, some being part-time.<sup>10</sup> The Executive's proviso report also identified San Francisco as having an elected chief defender.

Jurisdictions with elected public defenders are not noticeably better or worse than those without elected defenders. Some have good reputations and others, like Nebraska, have well-documented problems.

As the viability of alternative public defense structure models are determined, staff will conduct additional analysis of the implications of those models for achieving independence.

### Next Steps

As noted above, Proposed Ordinance 2013-0108 and 2013-0109 are not yet ready for Committee action. Case conflicts and budgetary review will occur with the next staff report.

Proposed Motion 2013-0162 would request that necessary transition planning occur between the Council and Executive, and as such, appears to constitute a reasonable and prudent business decision.

### **ATTACHMENTS**

1. Proposed Motion 2013-0162
2. Proposed Ordinance 2013-0108
3. Proposed Ordinance 2013-0109
4. Transmittal letter
5. Fiscal notes

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<sup>8</sup> The Spangenberg Group. Statewide Indigent Defense Systems: 2006

<sup>9</sup> Spangenberg, R.L. & Beeman, M.L. Indigent Defense Systems in the United States (1995)

<sup>10</sup> See f.n. 7



# KING COUNTY

## Signature Report

April 2, 2013

Attachment 1

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

### Motion

**Proposed No.** 2013-0162.1

**Sponsors** Patterson, Hague, Dembowski and Gossett

1           A MOTION relating to the implementation timeframe for  
2           reorganizing public defense services in King County.  
3           WHEREAS public defense services are mandated by the United States  
4           Constitution, the Washington State Constitution and state law, and  
5           WHEREAS the Sixth Amendment of the United States Constitution and Article I,  
6           Section 22 of the Washington State Constitution guarantee assistance of counsel to every  
7           citizen accused of a matter where loss of liberty is possible, and  
8           WHEREAS since the 1970s King County has contracted with private, nonprofit  
9           corporations for the provision of most indigent public defense services, and  
10          WHEREAS these corporations were viewed by the county as independent  
11          contractors and these corporations' employees therefore did not receive King County  
12          benefits nor were they enrolled in the Public Employees' Retirement System, and  
13          WHEREAS, in January 2006, a class action lawsuit was filed against King  
14          County, alleging that the employees of these corporations were county employees and  
15          that King County had a duty to enroll them in the Public Employees' Retirement System,  
16          and  
17          WHEREAS, in February 2009, a Pierce county superior court judge ruled that the  
18          county had exercised such control over the corporations that they were effectively county

19 agencies and their employees were employees of the county for purposes of enrollment in  
20 the Public Employees' Retirement System, and

21 WHEREAS, in August 2011, the Washington Supreme Court affirmed the trial  
22 court's decision in a five to four decision and the county's motion for reconsideration was  
23 denied, and

24 WHEREAS, in March 2012, the trial court entered an order requiring King  
25 County to enroll the current employees of the public defense firms in the Public  
26 Employees' Retirement System, which the county did, and

27 WHEREAS, on March 18, 2013, the King County council adopted Ordinance  
28 17537 approving a proposed settlement agreement that would recognize the current  
29 employees of the public defense firms as county employees on July 1, 2013, and

30 WHEREAS, the King County executive transmitted Proposed Ordinance 2013-  
31 0108, which would create a Department of Public Defense with two divisions, and

32 WHEREAS, the King County executive has indicated that he plans to begin  
33 taking steps to implement the new structure, including the hiring of two division  
34 directors, as early as April 2013 contingent on the King County council's approval of the  
35 proposed structure, and

36 WHEREAS, the King County council is committed to a thoughtful process for  
37 analyzing and considering the legal, fiscal, and policy issues of the proposal in order to  
38 ensure that the new public defense structure is consistent with best practices, such as the  
39 American Bar Association's ten principles of a public defense delivery system, and

40            WHEREAS, the council is committed to continue to include in its process close  
41        and collaborative consultation with indigent public defense corporations, employees, and  
42        others with interest and expertise in public defense services, and

43            WHEREAS, it might be impracticable for the council to act before May 2013 in  
44        light of the need for the council to fully analyze and explore potential options, and

45            WHEREAS, in coordination with enactment of an ordinance organizing the  
46        structure of delivery of public defense services sufficient time and care will be necessary  
47        to implement the structure and also ensure the continuous delivery to all persons of their  
48        constitutionally-guaranteed right to assistance of counsel;

49            NOW, THEREFORE, BE IT MOVED by the Council of King County:

50            The King County council requests that the executive work with the council to  
51        develop an interim plan to cover the timeframe between June 30, 2013, and full  
52        implementation of an ordinance organizing the structure of delivery of public defense

53 services. The King County executive should consider the possibility that the interim  
54 timeframe might need to continue through December 31, 2013, or thereafter.  
55

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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ATTEST:

Larry Gossett, Chair

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  

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Dow Constantine, County Executive

**Attachments:** None

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# KING COUNTY

## Signature Report

April 2, 2013

Attachment 2

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

### Ordinance

**Proposed No.** 2013-0108.1

**Sponsors** Patterson

1           AN ORDINANCE approving the organization and operations  
2           of the department of public defense within the executive  
3           branch with a department of public defense advisory board to  
4           support the director of the department of public defense and the  
5           independence of the legal practice of public defense; amending  
6           Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130,  
7           Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020,  
8           Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054,  
9           adding a new section to K.C.C. Title 4A, adding a new section  
10          to K.C.C. chapter 2.60 and repealing Ordinance 8257, Section  
11          6, and K.C.C. 2.60.070.

12          BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

13          SECTION 1. Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130 are  
14          each hereby amended to read as follows:

15           A. The department of community and human services is responsible to manage  
16          and be fiscally accountable for the community services division, mental health, chemical  
17          abuse and dependency services division ((the office of public defense)) and the  
18          developmental disabilities division.

19           B. The duties of the community services division shall include the following:

20           1. Working in partnership with communities and other funders to develop,  
21       support and provide human services which emphasize prevention, early intervention, and  
22       community education, and which strengthen individuals, families and communities in  
23       King County;

24           2. Managing programs which increase family self-sufficiency, enhance youth  
25       resiliency, reduce community violence and strengthen communities. The division shall  
26       also manage programs which address housing and community development needs, and  
27       help implement improvements identified in subarea and neighborhood plans for low and  
28       moderate income communities and population. Such programs are to include, but not be  
29       limited to, providing employment and training for youth and adults and providing  
30       assistance to indigent veterans and their families as authorized by chapters 41.02 and  
31       73.08 RCW. This division shall administer the county's federal housing and community  
32       development funds and other housing and community development programs;

33           3. Developing housing and community development policies and programs to  
34       implement the growth management policies throughout King County to provide  
35       affordable housing to low and moderate income residents; and

36           4. Duties regarding the women's advisory board specified in K.C.C. 2.30.040.

37           C. The duties of the mental health, chemical abuse and dependency services  
38       division shall include the following:

39           1. Managing and operating a system of mental health services for acutely  
40       disturbed, seriously disturbed and chronically mentally ill children and adults;  
41           2. Managing and operating a twenty-four-hour crisis response system, including  
42       civil commitment as a last resort;

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43           3. Providing treatment and rehabilitation service for alcoholism and for other  
44 drug addictions under federal and state laws and King County ordinances;

45           4. Selecting appropriate agencies for the provision of mental health services  
46 developing, implementing and monitoring the provision and outcomes of contracted  
47 services;

48           5. Being responsible for resource management of a comprehensive mental  
49 health system including provision of staff support to appropriate advisory boards, and  
50 serving as liaison to federal, state, and other governments and relevant organizations in  
51 carrying out planning and allocation processes;

52           6. Ensuring the continuing availability of appropriate treatment services for  
53 eligible individuals with a single diagnosis of a mental illness or a substance use or  
54 dependency disorder; and

55           7. Developing and maintaining a continuum of appropriate treatment services  
56 for eligible individuals with dual diagnoses of both a mental illness and a substance use  
57 or dependency disorder.

58           D. ~~((The duties of the office of public defense shall include those duties specified  
59 in K.C.C. chapter 2.60.)~~

60           E.)) The duties of the developmental disabilities division shall include the  
61 following:

62           1. Managing and operating a system of services for persons with developmental  
63 disabilities in accordance with relevant state statutes and county policies and to provide  
64 staff support to the King County board for developmental disabilities; and

65           2. Negotiating, implementing and monitoring contracts with community  
66 agencies for the provision of developmental disabilities services.

67           SECTION 2. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are  
68 each hereby amended to read as follows:

69           A. There is hereby established ((~~within the department of community and human~~  
70 ~~services the~~) a department of public defense within the executive branch. The duties of  
71 the department of public defense shall include:

72           1. Provide publicly financed legal defense services constitutionally required to  
73 the indigent and the near indigent person in all matters when there may be some factual  
74 likelihood that a person may be deprived of their liberty under the laws of the state of  
75 Washington or King County, including, but not limited to, a violation of any law of the  
76 state of Washington or ordinance of King County, juvenile and dependency matters,  
77 mental illness and similar commitment proceedings, revocations and habeas corpus  
78 proceedings when they arise in King County;

79           2. Provide such legal defense services available in an efficient manner that  
80 assures adequate representation at reasonable cost to the county;

81           3. Investigate and determine eligibility for publicly financed legal defense  
82 services. Indigent determination is controlled by RCW 10.101 et al. In addition, the  
83 department of public defense shall secure reimbursement from eligible persons, including  
84 the parents of juveniles represented by attorneys assigned by the department of public  
85 defense, where such persons can afford to pay some or all of the cost to King County of  
86 providing them such legal defense services;

87       4. Assign cases to one of the two divisions of the department staffed by  
88       attorneys who shall represent the highest percentage possible of all caseloads with  
89       unavoidable conflicts of interest in complex cases that may involve multiple defendants  
90       or multiple charges or other special circumstances being the cases receiving  
91       representation by assigned counsel; and

92       5. Establish and maintain a list of department credentialed lawyers on an  
93       assigned counsel panel who wish to participate in the defense of persons eligible under  
94       the public defense program.

95       B. A ((public)) director of the ((officer)) department of public defense shall be  
96       appointed by the ((county)) executive and approved by the ((county)) council. The  
97       ((county)) executive shall consult with county, state, and federal representatives of the  
98       criminal justice system during the recruitment and selection of the appointee. The duties  
99       of the director of the department of public defense shall include:

100       1. Manage the department of public defense;  
101       2. Ensure the department of public defense employs the needed technical and  
102       public defense expertise to ensure effective delivery of public defense services;  
103       3. Represent the executive in all forums where the defense perspective is  
104       required;

105       4. Ensure that the American Bar Association Ten Principles for a Public  
106       Defense System guide the development, management and department standards for legal  
107       defense representation;

108       5. Follow the Washington State Supreme Court Standards for Indigent Defense  
109       in establishing caseload limits for attorneys;

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110           6. Develop and maintain appropriate standards and guidelines for the  
111       qualification and experience level of public defense attorneys and paraprofessionals;  
112           7. Establish a reasonable fee for legal defense services, subject to the approval  
113       of the court, made available, at a client's expense, to a person charged in King County  
114       with a felony of public notoriety when the court finds that the defendant is unable to  
115       employ adequate private counsel as a result of such public notoriety; and  
116           8. Consult with a public defense advisory board and receive its  
117       recommendations on department policies, operations, and matters of budget.

118           SECTION 3. There is hereby added to K.C.C. Title 4A a new section to read as  
119 follows:

120           The processing fee for a defendant requesting counsel at public expense under  
121 K.C.C. chapter 2.60 is twenty-five dollars. All processing fee payments received shall be  
122 credited to the county current expense fund.

123           SECTION 4. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are  
124 each hereby amended to read as follows:

125           A. A defendant requesting counsel at public expense shall pay a processing fee of  
126 twenty five dollars as reimbursement to ((King)) the ((€))county for the administrative  
127 costs and expenses incurred in the processing of the application. The processing fees is  
128 payable at the time the request for public counsel is made to the office department of  
129 public defense. Processing fees are not refundable, even if the defendant is determined to  
130 be not eligible for counsel at public expense. A defendant will not be denied counsel  
131 because the defendant cannot pay the processing fee. All processing fee payments  
132 received shall be credited to the county current expense fund.

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133       B. To be eligible to receive legal defense services through the public defense  
134       program at no cost, the person must be financially unable to obtain adequate  
135       representation without substantial hardship to the person and the person's family and  
136       there must be some factual likelihood that the person will be deprived of his or her  
137       liberty. If a person has some resources available that can be used to secure representation  
138       but not sufficient resources to pay the entire costs of private legal services without  
139       substantial hardship to the person and the person's family, the department of public  
140       defense shall determine how much the person shall pay for the legal defense services  
141       provided through the department of public defense.

142       C. The department of public defense may provide its services to other  
143       municipalities in King County on a reimbursable basis and is authorized to negotiate  
144       appropriate contractual agreements therefor.

145       SECTION 5. Ordinance 8257, Section 6, and K.C.C. 2.60.070 are each hereby  
146       repealed.

147       NEW SECTION. SECTION 6. There is hereby added to K.C.C. chapter 2.60 a  
148       new section to read as follows:

149       A. There is created a King County department of public defense advisory board  
150       to support the director of the department of public defense and the independence of the  
151       legal practice of public defense within the executive branch.

152       B. The board shall review the activities and plans of the department of public  
153       defense and make recommendations to the director of public defense, and advise the  
154       director on matters of concern to the practice of public defense in King County.

155           C. The board shall consist of seven members. Board members shall be  
156       nominated by the executive and confirmed by the council. The board shall establish its  
157       own rules of procedure and choose its own chairperson.

158           D. The board's members shall be representative of the King County criminal  
159       defense community and shall include:

- 160           1. One member representing the Washington state Bar Association;
- 161           2. One member representing the King County Bar Association;
- 162           3. One member representing a minority bar association with representation  
163       revolving among these groups each membership term;
- 164           4. One member shall be a judge retired from the King County superior or  
165       district court;
- 166           5. One member from the faculty of a law school in Washington state; and
- 167           6. Two members shall be associated with community organizations that serve  
168       the indigent population of King County.

169           E. Members of the board shall serve two-year terms and until their successors are  
170       nominated and confirmed. Beginning in 2013, initial member representatives in  
171       designated in subsection D.1, 3. and 5. of this section shall be appointed for one-year  
172       terms, and member representatives designated in subsection D.2, 4. and 6. of this section  
173       shall be appointed for two-year terms. The terms of designated representative members  
174       shall coincide with the terms of the persons who are vacating those seats. Members of  
175       the board shall not be compensated for the performance of their duties as members of the  
176       board, but may be paid subsistence rates and mileage in the amounts consistent with  
177       county policy.

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178           F. The board shall meet at least once every two months and shall issue a report to  
179       the executive and council at least twice each calendar year on the state of King County  
180       public defense. One of the reports shall consist of the board's review of the executive  
181       proposed annual budget for public defense.

182           G. Any reporting to the council under this subsection shall be made in the form  
183       of a paper and electronic copy of the report filed with the clerk of the council, who shall  
184       forward electronic copies to all councilmembers and the lead staff of the budget and  
185       fiscal management committee or its successor.

186           H. The board shall exercise those powers and authorities, and incur those duties,  
187 responsibilities and liabilities as are provided for by K.C.C. chapter 2.28.

188

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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ATTEST:

Larry Gossett, Chair

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  

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Dow Constantine, County Executive

**Attachments:** None



## KING COUNTY

### Attachment 3

# Signature Report

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

April 2, 2013

## **Ordinance**

## **Proposed No. 2013-0109.1**

Sponsors Patterson

1 AN ORDINANCE making a net supplemental  
2 appropriation of \$3,157,000 to various general fund  
3 agencies and \$1,779,000 to various non-general fund  
4 agencies and amending the 2013/2014 Biennial Budget  
5 Ordinance, Ordinance 17476, Sections 43, 49, 49 and 63, as  
6 amended, and Attachment B, as amended.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. From the general fund there is hereby appropriated a net total of  
\$3,157,000 from various general fund agencies.

10        From various non-general funds there is hereby appropriated a net total of  
11      \$1,779,000 from various non-general fund agencies, amending the 2013/2014 Biennial  
12      Budget Ordinance, Ordinance 17476.

13           SECTION 2. Ordinance 17476, Section 43, as amended, is hereby amended by  
14 adding thereto and inserting therein the following:

15            GENERAL GOVERNMENT GF TRANSFERS - From the general fund there is  
16 hereby appropriated to

17 General government GF transfers \$1,779,000

**18 SECTION 3.** Ordinance 17476, Section 49 is hereby amended to read as follows:

19 ((OFFICE)) DEPARTMENT OF PUBLIC DEFENSE - From the general fund

20 there is hereby appropriated to:

21 ((Officer)) Department of public defense \$41,481,187

22 The maximum number of FTEs for ((officer)) department of public defense

23 shall be: 19.75

## 24 ER1 Expenditure Restriction:

25 Of this appropriation, \$300,000 shall not be encumbered or expended until the  
26 executive transmits a letter to the council certifying that the ((officer)) department of  
27 public defense participated in developing a report identifying long-range strategies for  
28 achieving efficiencies in the criminal justice system, as directed in section 19, Proviso P5,  
29 of this ordinance, which is relating to the office of performance, strategy and budget.

30 The executive must file the letter required by this proviso in the form of a paper  
31 original and an electronic copy with the clerk of the council, who shall retain the original  
32 and provide an electronic copy to all councilmembers, the council chief of staff and the  
33 lead staff to the budget and fiscal management committee or its successor.

**34 P1 PROVIDED THAT:**

35 Of this appropriation, ((\$20,000,000)) \$16,000,000 shall be expended or  
36 encumbered only for public defense services in the first half of 2013 provided by the non-  
37 profit independent agencies with which the county presently contracts, supplemented by  
38 assigned counsel, currently on a contract cycle of July 1 through June 30. Should the  
39 executive wish to reorganize or restructure the delivery of public defense services, a  
40 proposal and rationale for restructuring, with background information, must be presented  
41 to the council with sufficient time in advance of the proposed effective date for the new

42 structure for the council to review and approve or reject the proposal after study and a  
43 public hearing.

44 Prior to submitting a proposal to reorganize or restructure the delivery of public  
45 defense services, the council requests the executive to consult with interested parties,  
46 including the current non-profit agencies providing public defense services, labor unions  
47 representing employees of those agencies, bar leaders, and other governments currently  
48 served by the same non-profit agencies that provide service to the county.

49 SECTION 4. Ordinance 17476, Section 49, as amended, is hereby amended by  
50 adding thereto and inserting therein the following:

51 DEPARTMENT OF PUBLIC DEFENSE - From the general fund there is hereby  
52 appropriated to:  
53 Department of public defense \$1,378,000  
54 The maximum number of additional FTEs for department of public defense  
55 shall be: 275.00

56 SECTION 5. Ordinance 17476, Section 63, as amended, is hereby amended by  
57 adding thereto and inserting therein the following:

58 CAPITAL IMPROVEMENT PROGRAM - From the several capital  
59 improvement project funds there are hereby appropriated and authorized to be disbursed  
60 the following amounts for the specific projects identified in Attachment A to this  
61 ordinance.

| 62 | <b>Fund</b> | <b>Fund Name</b>                | <b>2013</b> |
|----|-------------|---------------------------------|-------------|
| 63 | 3771        | KCIT CAPITAL PROJECTS           | \$1,529,000 |
| 64 | 3951        | BUILDING REPAIR AND REPLACEMENT | \$250,000   |

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**65 TOTAL GENERAL CIP \$1,779,000**

**SECTION 6.** Attachment A to this ordinance hereby amends Attachment B to

67 Ordinance 17476, as amended, by adding thereto and inserting therein the projects listed

68 in Attachment A to this ordinance.

**SECTION 7.** Sections 3 and 4 of this ordinance take effect on the effective date

70 of the ordinance creating the department of public defense. (Proposed Ordinance 2013-  
71 XXXX).

72

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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ATTEST:

Larry Gossett, Chair

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  

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Dow Constantine, County Executive

**Attachments:** A. General government Capital Improvement Program

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**General Government Capital Improvement Program**

**ATTACHMENT A**

| Fund Title | Project | Project Name                                | 2013             | 2014 | 2015 | 2016 | 2017 | 2018 | Grand Total      |
|------------|---------|---|------------------|------|------|------|------|------|------------------|
|            |         | <b>3771/KCIT Capital Projects</b>           |                  |      |      |      |      |      |                  |
|            |         | 1120359 KCIT/OPD                            | 780,000          |      |      |      |      |      | 780,000          |
|            |         | 1120358 KCIT/OPD                            | 749,000          |      |      |      |      |      | 749,000          |
|            |         | <b>3771/KCIT Capital Projects</b>           | <b>1,529,000</b> |      |      |      |      |      | <b>1,529,000</b> |
|            |         | <b>3951/Building Repair and Replacement</b> |                  |      |      |      |      |      |                  |
|            |         | 1120507 DES FMD OPD Transition              | 150,000          |      |      |      |      |      | 150,000          |
|            |         | 1120508 DES FMD OPD Planning                | 100,000          |      |      |      |      |      | 100,000          |
|            |         | <b>3951/Building Repair and Replacement</b> | <b>250,000</b>   |      |      |      |      |      | <b>250,000</b>   |
|            |         | <b>Grand Total</b>                          | <b>1,779,000</b> |      |      |      |      |      | <b>1,779,000</b> |

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February 15, 2013

The Honorable Larry Gossett  
Chair, King County Council  
Room 1200  
C O U R T H O U S E

Dear Councilmember Gossett:

This letter transmits a report in response to a proviso contained within the 2013/2014 Adopted Budget Ordinance 17476, Section 49, P1; an ordinance with proposed King County Code revisions; and a supplemental budget ordinance.

The proviso directs that:

*“Should the executive wish to reorganize or restructure the delivery of public defense services, a proposal and rationale for restructuring, with background information, must be presented to the council with sufficient time in advance of the proposed effective date for the new structure for the council to review and approve or reject the proposal after study and a public hearing.”*

The enclosed Creation of a County Public Defense Agency Proviso Response report includes a proposal and rationale for restructuring and provides information regarding outreach to key stakeholders. Three key elements provide the foundation of the restructure:

1. Creation of a new Executive branch department of public defense, reporting to the County Executive, which can increase the voice and role of public defense within the criminal justice system.
2. Creation of two separate legal services divisions within the new department to prevent conflicts of interest in complex cases that may involve multiple defendants or multiple charges or other special circumstances. The divisions will be staffed by attorneys who will represent the highest percentage possible of all caseloads with conflict cases receiving representation by assigned counsel.

3. Creation of a Public Defense Advisory Board to support the director of the Department of Public Defense and the independence of the legal practice of public defense within the Executive branch.

For nearly 40 years the County has provided public defenders for those accused of crimes but unable to pay an attorney. These defense attorneys and staff have earned King County a national reputation for excellence and we are proud of their work.

Historically, defense services have been contracted out to private, non-profit corporations. For the last seven years, King County has been defending a class action lawsuit on behalf of the employees of these private agencies seeking to obtain public retirement benefits. The state Supreme Court ruled that the defense firms had become, in its words, “arms and agencies” of the County, and that their employees were therefore public employees for the purposes of retirement benefits. In December 2012, King County and the attorneys representing the *Dolan* class reached agreement on a proposed settlement resolving these and related claims. The settlement must be approved by the King County Council and by Pierce County Superior Court Judge John R. Hickman. On January 14, 2013, I transmitted the *Dolan* settlement to the Council with my recommendation for approval.

Among other things, the settlement provides that all individuals who are employed by the public defense non-profit corporations on June 30, 2013 will be recognized as King County employees with full benefits starting July 1, 2013. These dates coincide with the date by which the current contracts with the public defense non-profit corporations expire. The proposed settlement leaves up to King County how this requirement of the proposed settlement will be implemented. After careful thought and analysis, I have determined that it is in the best interests of the public defense function, its clients and our King County employees to implement this provision of the settlement through creation of a County department of public defense. It is not tenable to have hundreds of County employees working for – and hired, trained, managed, disciplined, promoted and fired by – several private entities.

The enclosed report and King County Code amendments therefore propose a County public defense agency staffed by King County employees as the mechanism to implement the proposed settlement. The proposal is designed around the American Bar Association’s Ten Principles of a Public Defense Delivery System (see Attachment A) including the three principles below: ):

1. Independence from political influence;
2. Support for a quality workforce and performance; and
3. Maximizing resources, value, and operational efficiency.

In developing this proposal, David Chapman, Director of the Office of Public Defense (OPD), led our efforts to gather stakeholder input on public defense models, principles, and operational issues. Initial outreach in December 2012 included the directors of the four private public defense organizations, public defense attorneys with the agencies and the assigned counsel panel, the affected union, and the courts. Outreach expanded in 2013 to include labor, bar leaders, other governments served by the public defense organizations that contract with King County, and counsel experienced with law firm mergers. Among the issues raised were concerns about independence, case conflicts, adequate client representation during the transition, and personnel issues.

I sincerely appreciate the time and effort stakeholders have spent providing their input. Their input has significantly enhanced the County's planning efforts as reflected in the attached proposals. While I am confident that this proposal will allow us to meet the basic requirements for providing public defense through a County department by July 1, our planning recognizes that certain components of this transition will take several months beyond that to fully implement.

The enclosed supplemental budget ordinance reflects the detailed operational planning done to date by County departments including human resources, facilities, and information technology. That planning work is continuing as we study current facility use and information technology systems. The current transition plan calls for attorneys and staff to remain in their current locations on July 1, 2013 and to transition to two divisions over time.

I have directed the OPD Director to continue to work with County staff, nonprofit agency management and staff, and external advisors to address concerns and plan a thoughtful transition to the new organizational structure.

The report and ordinances attached support the Justice and Safety Goal of the King County Strategic Plan to "Support safe communities and accessible justice systems for all," and specifically Strategy 2.a: "Ensure the availability of public defenders for those who need them." The proposal also supports the Financial Sustainability and Quality Workforce goals of the Strategic Plan.

I am proud to welcome public defenders as County employees. This is a new reality that requires a different model for the employees and for the County government. I know the Council shares my commitment that public defense in King County will continue to meet the highest standards of service and be delivered in a way that is client-centered, independent, and cost-effective. Thank you for your consideration of this important legislation.

The Honorable Larry Gossett  
February 15, 2013  
Page 4

Attachment 4

If you have any questions, please contact David Chapman, Director, Office of Public Defense, at 206-263-2174.

Sincerely,

Dow Constantine  
King County Executive

Enclosures

cc: King County Councilmembers  
ATTN: Michael Woywod, Chief of Staff  
Anne Noris, Clerk of the Council  
Carrie S. Cihak, Chief Advisor, Policy and Strategic Initiatives, King County  
Executive Office  
Dwight Dively, Director, Office of Performance, Strategy and Budget  
Jackie MacLean, Director, Department of Community and Human Services (DCHS)  
David Chapman, Director, Office of Public Defense, DCHS  
The Honorable Dan Satterberg, Prosecuting Attorney  
The Honorable Richard McDermott, Presiding Judge, Superior Court  
The Honorable Corinna Harn, Presiding Judge, District Court

**FISCAL NOTE**

Attachment 5

Ordinance/Motion No. 00-

Title: OPD Transition Supplemental Budget

Affected Agency and/or Agencies: Office of Public Defense

Note Prepared By: Krishna Duggirala

Note Reviewed By Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be: 250,000

**Revenue to:**

| Fund/Agency                   | Fund | Revenue     | Current Year | 1st Year | 2nd Year | 3rd Year |
|-------------------------------|------|-------------|--------------|----------|----------|----------|
|                               | Code | Source      |              |          |          |          |
| Building Repair & Replacement | 3951 | GF Transfer | 250,000      |          |          |          |
|                               |      |             |              |          |          |          |
|                               |      |             |              |          |          |          |
|                               |      |             |              |          |          |          |
| <b>TOTAL</b>                  |      |             |              |          |          |          |

**Expenditures from:**

| Fund/Agency                   | Fund | Department | Current Year   | 1st Year | 2nd Year | 3rd Year |
|-------------------------------|------|------------|----------------|----------|----------|----------|
|                               | Code |            |                |          |          |          |
| Building Repair & Replacement | 3951 |            | 250,000        | 0        | 0        | 0        |
|                               |      |            |                |          |          |          |
|                               |      |            |                |          |          |          |
|                               |      |            |                |          |          |          |
| <b>TOTAL</b>                  |      |            | <b>250,000</b> |          |          |          |

**Expenditures by Categories**

|                                | Current Year   | 1st Year | 2nd Year | 3rd Year |
|--------------------------------|----------------|----------|----------|----------|
| DES FMD OPD Planning/1120508   | 100,000        | 0        | 0        | 0        |
| DES FMD OPT Transition/1120507 | 150,000        | 0        | 0        | 0        |
|                                |                | 0        | 0        | 0        |
| <b>TOTAL</b>                   | <b>250,000</b> |          |          |          |

## Footnotes:

Currently, the non-profit public defense organization have offices throughout King County. When the individuals in those organizations become County employees on July 1, 2013, they will remain in their current work locations. In the long-term, the various offices in downtown Seattle will need to be consolidated into one location. The OPD transition supplemental request includes \$100,000 to fund planning for the long-term relocation and consolidation of the Seattle offices (project 1120508). The state of the current leased space is not fully known to the County at this time and \$150,000 is requested as a contingency in case tenant improvements are needed in those spaces (Project 1120507). Such improvements might include up-grades for ADA compliance and/or the need to make physical barriers for people performing County vs. non-County work. Tenant Improvement funds will not be expended without prior approval by OPD and PSB.

**FISCAL NOTE**

Attachment 5

Ordinance/Motion No. 00-  
 Title: KCIT-OPD Network Improvements  
 Affected Agency and/or Agencies: Office of Public Defense  
 Note Prepared By: Junko Keesecker  
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

**Revenue to:**

| Fund/Agency   | Fund | Revenue     | Current Year | 1st Year | 2nd Year | 3rd Year |
|---------------|------|-------------|--------------|----------|----------|----------|
|               | Code | Source      |              |          |          |          |
| 3771/KCIT OPD | 3771 | GF Transfer | 780,000      |          |          |          |
|               |      |             |              |          |          |          |
|               |      |             |              |          |          |          |
|               |      |             |              |          |          |          |
| <b>TOTAL</b>  |      |             |              |          |          |          |

**Expenditures from:**

| Fund/Agency           | Fund | Department | Current Year | 1st Year | 2nd Year | 3rd Year |
|-----------------------|------|------------|--------------|----------|----------|----------|
|                       | Code |            |              |          |          |          |
| 3771/KCIT OPD/1120359 | 3771 | N/A        | 780,000      |          |          |          |
|                       |      |            |              |          |          |          |
|                       |      |            |              |          |          |          |
|                       |      |            |              |          |          |          |
| <b>TOTAL</b>          |      |            |              |          |          |          |

**Expenditures by Categories**

|                        | Current Year | 1st Year | 2nd Year | 3rd Year |
|------------------------|--------------|----------|----------|----------|
|                        |              |          |          |          |
| 56990 CIP Expenditures | 780,000      |          |          |          |
|                        |              |          |          |          |
|                        |              |          |          |          |
|                        |              |          |          |          |
| <b>TOTAL</b>           |              |          |          |          |

**Note**

When the County begins providing public defense services directly on July 1, 2013, it is anticipated that some of the computers used by public defenders currently will need to be replaced. All of the computers, new or existing, will need to be configured to work on the County network and additional servers and network support may be needed. Because the County has limited knowledge of the existing computer inventory, this request assumes that 1/3 of the existing machines, roughly 100, will be replaced in 2013. The request also includes the staff time needed to configure all public defense computers for the County network, some network and server costs, and a 15% contingency. As more information about the computer inventory is learned, cost estimates will be adjusted.

**FISCAL NOTE**

Attachment 5

Ordinance/Motion No. 00-

Title: KCIT-OPD Case Management Project

Affected Agency and/or Agencies: Office of Public Defense

Note Prepared By: Junko Keesecker

Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

**Revenue to:**

| Fund/Agency   | Fund | Revenue     | Current Year   | 1st Year | 2nd Year | 3rd Year |
|---------------|------|-------------|----------------|----------|----------|----------|
|               | Code | Source      |                |          |          |          |
| 3771/KCIT OPD | 3771 | GF Transfer | 749,000        |          |          |          |
|               |      |             |                |          |          |          |
|               |      |             |                |          |          |          |
|               |      |             |                |          |          |          |
| <b>TOTAL</b>  |      |             | <b>749,000</b> |          |          |          |

**Expenditures from:**

| Fund/Agency           | Fund | Department | Current Year   | 1st Year | 2nd Year | 3rd Year |
|-----------------------|------|------------|----------------|----------|----------|----------|
|                       | Code |            |                |          |          |          |
| 3771/KCIT OPD/1120358 | 3771 | N/A        | 749,000        |          |          |          |
|                       |      |            |                |          |          |          |
|                       |      |            |                |          |          |          |
|                       |      |            |                |          |          |          |
| <b>TOTAL</b>          |      |            | <b>749,000</b> |          |          |          |

**Expenditures by Categories**

|                        | Current Year   | 1st Year | 2nd Year | 3rd Year |
|------------------------|----------------|----------|----------|----------|
|                        |                |          |          |          |
| 56990 CIP Expenditures | 749,000        |          |          |          |
|                        |                |          |          |          |
|                        |                |          |          |          |
|                        |                |          |          |          |
| <b>TOTAL</b>           | <b>749,000</b> |          |          |          |

## Notes

Currently, each of the four non-profit public defense organizations operations its own case management system. When the County takes over direct management of defense cases on July 1, 2013, a single case management system will be needed. This request will fund requirements gathering, selection of one of the four existing systems as an interim system for all attorneys, license, data migration and training. Depending on the ability of the case management system selected as an interim solution to

**FISCAL NOTE**

Attachment 5

Ordinance/Motion No. 00-

Title: OPD Transition Supplemental Budget

Affected Agency and/or Agencies: Office of Public Defense

Note Prepared By: Krishna Duggirala

Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be: 3,157,000

**Revenue to:**

| Fund/Agency | Fund | Revenue | Current Year | 1st Year | 2nd Year | 3rd Year |
|-------------|------|---------|--------------|----------|----------|----------|
|             | Code | Source  |              |          |          |          |
| TOTAL       |      |         |              |          |          |          |

**Expenditures from:**

| Fund/Agency                 | Fund      | Department | Current Year | 1st Year | 2nd Year | 3rd Year |
|-----------------------------|-----------|------------|--------------|----------|----------|----------|
|                             | Code      |            |              |          |          |          |
| General Fund - OPD          | 000000010 | A95000     | 1,378,000    | 0        | 0        | 0        |
| General Fund - GF Transfers | 000000010 | A69500     | 1,779,000    |          |          |          |
| TOTAL                       |           |            | 3,157,000    |          |          |          |

**Expenditures by Categories**

|  | Current Year | 1st Year | 2nd Year | 3rd Year |
|--|--------------|----------|----------|----------|
| <sup>1</sup> Personnel for onboarding      | 416,000      | 0        | 0        | 0        |
| <sup>2</sup> Supplies for additional staff | 103,000      | 0        | 0        | 0        |
| <sup>3</sup> 20% Contingency               | 104,000      | 0        | 0        | 0        |
| <sup>4</sup> Vehicle Purchase              | 755,000      | 0        | 0        | 0        |
| <sup>5</sup> GF Transfer to KCIT           | 1,529,000    | 0        | 0        | 0        |
| <sup>6</sup> GF Transfer to FMD            | 250,000      | 0        | 0        | 0        |
| TOTAL                                      | 3,157,000    |          |          |          |

## Footnotes:

<sup>1</sup> In preparation for individuals at the non-profit public defense organizations becoming County employees on July 1, 2013, dedicated resources from HRD, including staff and consultants, will be needed. Additionally, OPD will hire some management positions before July 1 to prepare for the transition.

<sup>2</sup>Supplies budget is estimated costs of startup supplies, such as business cards, nameplate and office supplies.

<sup>3</sup>Contingency is calculated on the above 2 items.

<sup>4</sup> OPD estimates that it will need 30 cars for social workers and investigators who spend significant time in the field. OPD offices located in Kent and First Hill will not be able to access central motor pool and will need vehicles at their locations. Vehicles will be needed in downtown Seattle because heavy use makes the motor pool inadequate to meet the need. The vehicles will be paid for in the OPD budget and then transferred to King County Fleet Administration.

<sup>5</sup> Transfer to King County Information & Technology (KC IT) is for a single case management system and includes its system data migration, testing and training of personnel after deployment. This amount also includes costs associated with required computers & printers purchase, installation/set-up for to meet immediate needs.