



King County

Committee of the Whole

STAFF REPORT

Agenda Item:	6-10	Name:	Patrick Hamacher, Amy Tsai, Nick Wagner
Proposed No.:	2013-0212, 0215, 0216, 0237, 0242	Date:	May 15, 2013
Invited:	<ul style="list-style-type: none"> • Dave Chapman, Director, Office of Public Defense • Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB) 		

SUBJECT

Ordinances regarding a charter amendment for the selection of the chief Public Defender by the Executive (2013-0212), implementing ordinance for the charter amendment (2013-0242), public defender district model (2013-0237), an interim reorganization for the Office of Public Defense (2013-0215), and a supplemental request for the interim (2013-0216).

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 proposed a new County Department of Public Defense (2013-0108, 2013-0109).

The Council in Motion 13886 requested an interim plan in recognition of the need for careful deliberation in the face of timeline demands created by the proposed Dolan settlement. Two proposed ordinances related to the interim are as follows:

- **PO 2013-0215** would create an interim structure for public defense until a final structure can be decided upon and put into place.
- **PO 2013-2016** is a supplemental request for the costs of implementing the interim structure.

Two proposed models for a final public defense structure that have received Councilmember interest and questions in Committee are as follows:

- **PO 2013-0212** is a proposed charter amendment that would create an in-house department with the Public Defender appointed by the Executive, with measures put into place to insulate the Public Defender from political influence. **PO 2013-0242** is the implementing ordinance accompanying the charter amendment.

- **PO 2013-0237** is a proposed Public Defender District that gives the Public Defender the option to contract some portion of indigent defense-related work to outside entities besides the assigned counsel panel.

BACKGROUND

The following background is a condensed summary of the background on indigent defense, the Dolan lawsuit, and the proposed ordinances.

Lawsuit Drives Public Defense Changes

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.

Pending and Related Legislation (Items discussed in this staff report are in bold.)

PO 2013-0108 (Public Defense Department) – In response to the Court ruling and settlement, the County Executive has proposed the creation of a Department of Public Defense with two major Divisions, one that would handle the bulk of cases and calendar assignments and another that would primarily handle conflict cases. **PO 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.

PO 2013-0109 (Supplemental) – There is a supplemental budget request for transition costs to effectuate the proposed public defense model. **PO 2013-0109** would provide a supplemental appropriation of \$4.9 million from the General Fund, with 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.

Motion 13886 (Transition Plan) – Adopted April 8, 2013, Motion 13886 requested that the Executive transmit legislation to the County Council to cover the transition from the current model to a new public defense structure.

PO 2013-0215 – In response to Motion 13886, on April 25, 2013, the Executive transmitted an interim structure for public defense. This proposal would create a new department of public defense with four divisions, which would be in place until such time as the Council decides on a new public defense structure and that structure is implemented.

PO 2013-0216 (Supplemental) – There is a supplemental budget request with a net impact of \$2.3M that reflects costs related to establishing an interim structure.

PO 2013-0210, 2013-0211, 2013-0212 – Three ordinances were introduced on April 18 that are alternative forms of a charter amendment that would create a Department of Public Defense within the executive branch and a process for selecting a County Public Defender to head the department. The amendments differ primarily in the method of selecting the County Public Defender: appointment by a Public Defense Oversight Commission (2013-0210), election by county voters (2013-0211), or appointment by the Executive, subject to confirmation by the Council (2013-0212).

PO 2013-0242 – There is an implementing ordinance to the proposed charter amendment for appointment by the Executive (2013-0212). The implementing ordinance provides additional details on the charter requirements.

PO 2013-0237 – There is a proposed ordinance that would create a public defender district, which would be an in-house department with aspects such as selection of the Public Defender set by state law. The proposed ordinance also gives the Public Defender the option to contract some portion of indigent defense-related work to outside entities besides the assigned counsel panel.

ANALYSIS

This is the sixth briefing on the proposed ordinances for public defense.

Final structure – Previous staff reports have considered various alternative models and their ability to handle independence and conflicts. Out of all of these models, two have both generated Councilmember interest in committee and resulted in proposed legislation. These include:

- 1) an in-house department with an Executive-appointed Public Defender, with job securities put into place for the Public Defender that are created by a charter amendment, and
- 2) an in-house public defender district with job securities put into place for the Public Defender that are created by state statute.

This staff report analyzes each of these two proposals for their level of independence and oversight.

Interim structure – As an outcome of the Dolan lawsuit and proposed settlement, current non-profit agency staff will be recognized as county employees on July 1. The May 1 briefing discussed the Executive-proposed interim structure and supplemental request. This staff report briefly summarizes them and provides updates. **The interim structure and supplemental request are ready for possible action.**

Independence and Oversight

Independence

Previous staff reports have discussed the principle of independence as contained in the first of the Ten ABA Principles for Public Defense. Independence refers to the ability of public defenders to 1) exercise their professional judgment in individual case representation and 2) effectively lobby for funding to perform these services, free from political influence.

The alternative models analyzed in previous staff reports vary in their application of these principles of independence. Aspects that promote independence include, for example:

- Establishing selection procedures for the Public Defender that remove the decision from the hands of a single individual such as the county Executive;
- Establishing removal procedures that are not at-will employment, such as instituting a for-cause requirement, requiring action by a body consisting of multiple individuals, or creating the position for a term of years; and
- Giving the Public Defender the authority to collectively bargain the working conditions of his or her staff.

A third aspect of independence is the independence to advocate for system improvements and criminal justice reform. This aspect of independence is not referenced in the ABA principles, but has been raised in previous staff reports in the context of social justice programs and system reform such as the creation of the county's therapeutic courts. It should be noted that striving to achieve this third arm of independence, although it can have a significant impact on the delivery of criminal defense, is not part of the county's constitutional duty for indigent defense and is therefore a policy choice. Aspects of public defense structures that promote this kind of independence include, for example:

- Authorizing the duties of an in-house department to include system advocacy and criminal justice reform efforts; or
- Assigning public defense and related services to outside entities who are not subject to the political pressures and authorized duties of an in-house department.

Oversight

As has been noted in previous briefings, a tension that exists within the county public defense system is the balance between having sufficient control over a public defense program to have effective oversight, and still allowing the Public Defender sufficient discretion to function independently and exercise his or her best professional judgment.

The county can exercise oversight by retaining control over financial accountability (i.e., control of the public defense budget and monitoring the proper expenditure of resources) and by participating in performance accountability (i.e., monitoring whether the department is performing its functions effectively, at a reasonable cost, while maintaining case standards and striving to follow principles for best practices).

The Executive appointment model and the Public Defender District model are analyzed below for their ability to achieve independence while retaining sufficient oversight.

PO 2013-0212 and -0242 Charter Amendment and Implementing Ordinance

This section summarizes the proposed charter amendment for an Executive-appointed Public Defender, the implementing ordinance for the charter amendment, and the accompanying striking amendment for each of these. The model is also discussed in terms of its ability to achieve independence and oversight.

PO 2013-0212 Executive Appointment Charter Amendment

PO 2013-0212 is a proposed charter amendment that, subject to voter approval, would amend the King County charter as follows:

- Creates a career service Department of Public Defense
- Creates a county Public Defender

The charter amendment broadly specifies requirements for selection (the Public Defender is appointed by the Executive from a list of three names submitted by an advisory board, subject to Council confirmation by 5 votes), for termination (the Public defender serves a four-year term but may be removed by the Council for cause with 6 votes), and qualifications (the Public Defender is required to be admitted to practice law in Washington with 10 years of criminal defense experience and other qualifications as set by ordinance).

- Creates a Public Defense Advisory Board

The charter amendment charges the advisory board with recommending three names when there is a Public Defender vacancy, plus other oversight duties as prescribed by ordinance.

- Authorizes collective bargaining by the Public Defender

The charter amendment allows the Council to make the Public Defender the county's bargaining agent on all employee matters except compensation and benefits which are negotiated by the Executive.

Striking Amendment to 2013-0212

A striking amendment to the proposed charter amendment (Proposed Ordinance 2013-0212) makes technical corrections plus several clarifications, including:

- Providing that the Council may prescribe by ordinance additional duties for the department and the advisory board;
- Requiring that the term of the Public Defender be coterminous with the Prosecutor; clarifying handling of vacancies before the end of a term;
- Clarifying that early vacancies do not reset the four-year term;
- Clarifying that the role of the advisory board is to "review, advise and report" rather than "oversee"
- Eliminating the requirement of a joint proposal from the Public Defender and Executive for joint bargaining.

PO 2013-0242 Implementing Ordinance to Charter Amendment

PO 2013-0242 is the implementing ordinance to the charter amendment that contains all of the details that the charter amendment authorizes the council to create by ordinance. Subject to voter approval of the charter amendment, the implementing ordinance does the following:

- Sets duties of the Public Defender

The Public Defender manages the department to deliver effective public defense, meet state standards, and follow the Ten ABA Principles of Public Defense¹ to the extent feasible. He or she prepares the annual budget and reports annually on the status of implementing the Ten ABA Principles. He or she is authorized to advocate and work for social justice and criminal justice reform related to public defense.

- Defines examples of what constitutes removal "for cause"

The Public Defender can be removed prior to the expiration of his or her term by the Council for cause with 6 votes.² The charter amendment specifies that grounds include the grounds for vacancy of elective office under Section 680 of the county charter. The implementing ordinance identifies additional "for cause"

¹ 1) Independence of assigned counsel system; 2) Participation of Private Bar and Defender Staff; 3) Prompt Appointment of Counsel; 4) Sufficient Time and Confidential Meeting Space; 5) Reasonable Workload/Caseload; 6) Attorney Qualifications for Case Assignments; 7) Continuous Representation by the Same Attorney; 8) Parity of Resources with Prosecution and Equal Voice; 9) Training and Continuing Legal Education; 10) Supervision and Review of Performance.

² Council staff identified four agencies, all in the Legislative branch, that have "for cause" termination provisions. The Auditor (KCC 2.20.030), Hearing Examiner (KCC 20.24.040) and Ombudsman (KCC 2.52.050) require a two-thirds majority vote of the Council. The King County Charter (Section 710) requires a majority vote to remove a member of the Board of Appeals and Equalization after a public hearing (KCC 2.34.020).

reasons that may include, but are not limited to, failure to meet the qualifications for office, conviction of a crime, or a finding or stipulation of misconduct under the Washington Rules of Professional Conduct.

- Sets compensation for the Public Defender at the same level as the Prosecutor.
- Sets duties of the Public Defense Advisory Board

As required by the charter amendment, the advisory board is charged with recommending three names when there is a Public Defender vacancy. In addition, the implementing ordinance requires the advisory board to regularly review activities and plans of the department, make recommendations to the Public Defender on matters concerning the department, and issue at least annually a report to Executive and Council on the state of county public defense and a report reviewing the proposed budget for public defense.

- Sets membership and selection process of the Public Defense Advisory Board:

The advisory board includes ten members with one representative from each of the following:

- 1) Washington Association of Criminal Defense Lawyers;
- 2) Washington State Office of Public Defense;
- 3) Washington Defender Association;
- 4) King County Bar;
- 5) a minority bar;
- 6) a nonpartisan organization focusing on mental health (such as the King County Mental Health Advisory Board);
- 7) a nonpartisan organization focusing on substance abuse (such as the King County Alcoholism and Substance Abuse Administrative Board);
- 8) a nonpartisan organization focusing on veterans (such as the King County Veterans Program Advisory Board);
- 9) a nonpartisan organization focusing on poverty; and
- 10) a nonpartisan organization focusing on juvenile justice.

The Council appoints each board member by motion from among one or more individuals nominated by the entity that the member will represent and from submitted applications. The Law Justice Health and Human Services Committee may review applicants, interview and make recommendations. The advisory board members serve staggered three year terms and members may be removed by the Council with 6 votes.

- Sets qualifications of the Public Defense Advisory Board

Each member is required to have substantial relevant experience. A majority of the membership should have substantial experience specifically in indigent defense. The board should reflect the diversity of clients. Board members may not hold elected office or have ties to the prosecutor's office or courts.

- Designates Public Defender as bargaining agent for everything except compensation and benefits for employees of the department

The Public Defender bargains working conditions and the Executive bargains wages and benefits. The Public Defender and Executive consult and collaborate in advance of negotiations and prior to proposing or agreeing to language in any collective bargaining agreement. Any disagreements on respective areas of bargaining authority or positions to be taken on issues are identified in a confidential joint report to the Council. This is similar to the arrangement between the Executive and the Sheriff.

Striking Amendment to 2013-0242

There is a proposed striking amendment to the implementing ordinance to the charter amendment that makes clarifications and modifications, including the following:

- Revises findings to conform to related legislation;
- Provides that the department should have four divisions;
- Makes a technical correction that recommended names go to the Executive
- Makes clear that the application process for advisory board appointments applies only to the positions that do not identify a specific group;
- Modifies a representative of a minority bar to be a nonpartisan organization active in King County that focuses on issues of concern to people of color, such as a minority bar association;
- Qualifications of the Public Defender include being an active member of the bar in good status;
- Precinct committee officers are exempted from the exclusion of elected officials from service on the advisory board.

The striking amendment would amend some of the same code provisions as the proposed interim ordinance (Proposed Ordinance 2013-0215). As a consequence, once the interim ordinance has been adopted, the draft striking amendment to the implementation ordinance will need to be revised to match what is adopted.

Independence and Oversight

The table below summarizes the steps the Executive Appointment model takes to achieve independence and oversight.

Table 1. Executive Appointment Model Independence and Oversight

Independence	Compared to Exec Proposed (2013-0108)
Selection	<u>Strong</u> - The Executive is restricted to a selection of 3 names from the advisory board, and Council confirmation is required. There are also measures in place to ensure the advisory board has relevant expertise to make sound recommendations.
Removal	<u>Strong</u> – The Public Defender has a 4-year term and can otherwise only be removed by two-thirds of the Council for cause. This makes removal significantly more difficult than the Executive's proposed at-will position. The Executive's proposal has an advisory board which is helpful for ensuring individuals with relevant expertise weigh in, but the board's recommendations are non-binding on the Executive.
Collective bargaining	<u>Strong</u> – The Public Defender is given collective bargaining power for working conditions, giving him or her greater control over the day to day functions of the department compared to the Executive's proposal which has the Executive be the bargaining agent for the county (as he is for all regular departments).
System advocacy	<u>Moderate</u> – Because the Public Defender enjoys the independence granted by the provisions above, he or she has greater freedom to engage in system advocacy. The implementing ordinance specifically authorizes advocacy for social justice and criminal justice reform. Whether such activities would actually occur would ultimately be affected by the department's budget.
Oversight	
Financial accountability	<u>Strong</u> – The Council retains control over the department via its budget-setting authority. There is annual reporting by the Public Defender as well as annual review and reporting by the advisory board that provides information to inform the Council's budget decisions.
Performance accountability	<u>Moderate</u> – At the staff level, attorneys must follow state standards and provide effective assistance of counsel. Non-legal staff do not have those requirements. The advisory board reviews and reports on Defender activities. The main power of enforcement rests with the annual budget or with the power of removal; annual reporting by the Public Defender and advisory board can help inform the Council during these windows of accountability. However, performance accountability is weakened whenever job security is strengthened. Unlike a standard Executive department, the independence provisions remove the Public Defender largely from the control of the Executive. On the other hand, any reporting requirements that are required of all Executive departments, such as the Council's budget transparency ordinance, would still apply to the Public Defender.

PO 2013-0237 Public Defender District

PO 2013-0237 would create a Public Defender District (PDD) for King County as allowed by state law (Chapter 36.26 RCW). The reliance on state law authorization allows the county to implement certain measures of independence that are characteristics of a PDD, without requiring an amendment to the county charter.

PO 2013-0237 does the following:

- A public defender district for King County is created.

A public defender district does not create a new jurisdiction. It is the name of the state-created public defense system that has specific requirements for selection, qualifications, reporting, compensation, and duties. The public defender district in Spokane discussed in previous staff reports is essentially an in-house department with public defender district characteristics.

- The Public Defender must be a qualified attorney licensed to practice law in Washington state.

The PDD model incorporates as recommended qualifications that the Public Defender should also have ten years of criminal defense experience, including felonies and misdemeanors, and supervisory and managerial experience. These are the same qualifications that are required in PO 2013-0242, the implementing ordinance to the Executive-Appointed structure discussed above.

- The Public Defender is selected and may be removed by a three-member selection committee. The selection committee is encouraged to consider three candidates recommended by a public defense advisory board.

The selection committee consists of the chair of the County Council, the presiding judge of the Superior Court, and the president of the King County Bar Association. For PDDs, state law requires that the selection committee for the Public Defender consist of a Councilmember, member of the Superior Court, and a practicing attorney. The PDD model allows the judge or the president of the bar association to substitute another member who meets those criteria.

- The Public Defender serves a term of four years, coterminous with the elected term of the Prosecutor.
- The Public Defender compensation may not exceed that of the Prosecutor.
- The Public Defender makes an annual report of costs and expenditures to the Council and Executive.

- A public defense advisory board (PDAB) is created.

PDAB's characteristics mirror those of the advisory board in the implementing ordinance to the Executive-Appointed model discussed above (2013-0242), except that precinct committee officers are allowed to be on the advisory board and instead of having a representative from the minority bar, the PDD model calls for a member from a nonpartisan organization that focuses on issues concerning people of color, which may include minority bar associations.

- The four-division model created by the interim ordinance is expected to consolidate into fewer divisions over time.

The department structure mirrors that of the interim ordinance's suggested four divisions, except that the PDD model signals that over time, the number of divisions should reduce as appropriate as department needs become better known.

- The Public Defender is authorized to contract for services when the department is unable to take a case due to in-house conflicts of interest,³ or when the Public Defender finds it appropriate to do so and funds are available.

Examples of entities who could apply to provide outside services include private law firms, non-profit entities, or a public corporation formed by the county to provide public defense and related services. The PDD model does not create such a public corporation; it could be created in the future by separate ordinance. It should be noted that contracting for services would require legal analysis and policy choices as a result of the Dolan litigation.

Independence and Oversight

The table below summarizes the steps the Public Defender District model takes to achieve independence and oversight. It should be noted that although some categories are rated lower in independence or oversight compared to the Executive Appointment model discussed above, this is to be expected because the model is constrained by the terms of the PDD statute. In exchange for sacrificing some flexibility in customizing independence and oversight, the PDD does not require a charter amendment.

Some benefits of avoiding a charter amendment include:

- Ability to implement immediately
- Avoid risk of voters rejecting the ballot measure

³ The PDD model also retains the ability of the Public Defender to use the assigned counsel panel to handle conflicts.

- Although any structural implementation is a large undertaking that is not lightly nor inexpensively undone, if the model proves ineffective, it is easier to undo a code revision than a charter change.

Whether these benefits outweigh the limitations on independence and oversight is a policy decision.

Table 2. Public Defender District Model Independence and Oversight

Independence	Compared to Exec Proposed (2013-0108)
Selection	<u>Moderate</u> – Placing selection of the Public Defender in the hands of individuals representing three separate interests provides a measure of independence compared to Executive appointment. The judicial position on the selection committee is at odds with the ABA principles of independence which recommend independence from the judiciary. However, having the participation of an advisory board, even if its recommendations are non-binding, provides an additional check in the process and helps to ensure that individuals with relevant expertise weigh in on the best candidates for the job.
Removal	<u>Strong</u> – The Public Defender has a 4-year term and can otherwise only be removed by the selection committee. This makes removal significantly more difficult than the Executive's proposed at-will position.
Collective bargaining	<u>Neutral</u> – Because the PDD model does not propose a charter amendment and the PDD statute is silent on collective bargaining, the Executive remains the bargaining agent for the county. This is identical to the Executive's proposal. It is worth noting that the ability to collectively bargain working conditions could be considered to be the least important of the protections for independence. This is because the types of working conditions the Executive would bargain would be expected to be similar to those that the head of any department would bargain for its employees. Matters such as caseload requirements and other standards for effective representation are covered by state requirements.
System advocacy	<u>Moderate</u> – Because the Public Defender enjoys the independence granted by the provisions above, he or she has greater freedom to engage in system advocacy. The Public Defender is authorized to engage outside counsel for criminal defense and related services. Outside counsel could have greater ability to act independently since they would not be managed by the county; they would, however, be subject to terms of their contract. Whether such activities would actually occur would ultimately be affected by the department's budget.
Oversight	
Financial accountability	<u>Strong</u> – The Council retains control over the department via

	its budget-setting authority. There is annual reporting by the Public Defender as well as annual review and reporting by the advisory board that provides information to inform the Council's budget decisions.
Performance accountability	<p><u>Moderate</u> – At the staff level, attorneys must follow state standards and provide effective assistance of counsel. Non-legal staff do not have those requirements. The advisory board reviews and reports on Defender activities. The main power of enforcement rests with the annual budget or with the power of removal; annual reporting by the Public Defender and advisory board can help inform the Council during these windows of accountability. However, performance accountability is weakened whenever job security is strengthened. Furthermore, the removal authority is vested in a 3-member body. Except for the Council position on the committee, the Council and Executive have no role in termination or reappointment. Unlike a standard Executive department, the independence provisions remove the Public Defender largely from the control of the Executive. On the other hand, any reporting requirements that are required of all Executive departments, such as the Council's budget transparency ordinance, would still apply to the Public Defender.</p>

As has been noted in previous staff reports, given the history of public defense in King County, the county's commitment to quality representation, and the strength of the region's defender community, any structural model is likely to provide effective representation that meets the county's constitutional obligations for indigent defense. The policy questions for the Council are:

- What is the role that the Council and Executive should play in the selection and removal process?
- How much oversight does the Council wish the county to have over departmental finances and performance?
- Is system advocacy a priority, and if so, what type of advocacy is desired and how should it be institutionalized and/or financed?
- Is a charter amendment an acceptable cost to achieve desired features?

Although both proposals have been prepared by staff to be ready for committee action, some additional clean-up and finalization of policy decisions may be required prior to Council action.

PO 2013-0215 OPD Interim Ordinance

On April 8, 2013, the Council adopted Motion 13886 (see Attachment 14), which requested that the Executive transmit legislation to the County Council to cover the transition from the current model to a new public defense structure. The motion expressed the Council's commitment to a thoughtful process to ensure that the new model that was selected would be consistent with best practices. The motion also

recognized that implementing the new structure would take time, and that the county would need an interim structure on July 1 to ensure uninterrupted delivery to indigent public defense clients of their constitutionally-guaranteed right to assistance of counsel.

On April 25, the Executive transmitted a proposal for an interim public defense structure (PO 2013-0215, "interim ordinance") and a supplemental budget request reflecting transition cost estimates (PO 2013-0216, "interim supplemental").

Interim Structure

The following is a summary of the interim structure that was described in the May 1 staff report. PO 2013-0215 includes the following:

- Removes the Office of Public Defense from under the Department of Community and Human Services (DCHS) and creates a new Department of Public Defense.
- The department should have four divisions.
- Duties of the department include the direct provision of public defense services. The director of the department manages the department, ensures employment of sufficient staff to effectively deliver public defense services, and is guided by the ABA principles for standards for a public defense system.
- The current director of OPD is the interim director of the department.
- The Council requests the Executive to negotiate any agreements necessary to implement the Dolan settlement. Unresolved issues that may require agreements are listed by example in Attachment 1 to the proposed ordinance.
- Conflicts that cannot be resolved in-house will be sent to an assigned counsel panel. The department shall also develop a conflicts policy to determine when a conflict exists.
- The department may enter into agreements to provide services to the state of Washington, tribal governments and municipalities in King County on a full cost recovery basis, subject to Council approval when required.
- The proposed ordinance is an emergency ordinance and would take effect immediately upon Council adoption.

The interim ordinance (PO 2013-0215) identified transition items that the current Office of Public Defense (OPD) must address with the four private, nonprofit public defender agencies in order to bring the non-profit employees on board as county employees on July 1 and ensure uninterrupted public defense services. The full list of transition items is included in Attachment A to PO 2013-0215. The May 1 staff report discussed these transition items in detail.

These transition items include 1) wrapping up existing contracts, 2) office logistics, 3) administrative processes, and 4) determining the status of non-county activities currently performed by the non-profit agencies. **OPD appears to be making progress on all items. Council staff will continue to monitor OPD's progress on these items between now and the July 1 transition date.**

Staff have analyzed the components of the interim proposal and concluded that the terms appear to be reasonably constructed to include those elements required for creation of an interim in-house employee structure while leaving the door open for alternative models should the Council choose to adopt a different final structure. This is further supported by the reduction in the supplemental request to reflect the interim period, as discussed in the supplemental section below.

Proposed Striking Amendment to 2013-0215

There is a proposed striking amendment to the interim ordinance. The interim ordinance made various modifications to K.C.C. Chapter 2.60, the public defense chapter. The striking amendment removes some language that had substantive impacts that require further analysis, such as the types of cases the department represents. It also adds departmental authority to do the ROYAL project; OPD expects to be able to continue the contract at least on a temporary basis. Pay provisions are clarified for represented employees based on legal review. Additional references to non-profit agency defender contracts are removed. The method of appointing the interim department director is reverted to existing code based on legal review. The proposed striker also does a technical synchronization of current code with the interim proposal.

The interim ordinance, with the proposed striking amendment, is ready for possible action. It should be noted that upon passage, the "interim" structure would actually be the permanent structure for public defense until such time as the Council adopts a different structure. Council staff will work with Executive staff to revisit the substantive changes to K.C.C. Chapter 2.60 that are removed in the proposed striker, so that any necessary changes can be incorporated when the Council acts to adopt a final structural model.

PO 2013-0216 OPD Interim Supplemental

Budget Detail Plan

The proposed interim structure (2013-0215) was transmitted with a budget detail plan that reflects the sections of the current Office of Public Defense, which are OPD Direct Administration and OPD Legal Services. Council staff requested an updated budget detail plan to reflect the four-division structure intended by the proposed interim ordinance. OPD staff provided the budget detail plan in the table below, based on estimates derived from the existing OPD cost model.

Table 3. Budget Detail Plan for Ord. Sec. 49, A95000 Office of Public Defense

SECTION NAME	2013 Adopted Expenditures	Adopted FTEs	Transition Supp. Expenditures	Transition FTEs	Total Revised Expenditures	Revised FTEs
	\$ 41,481,187	19.75	\$ 490,000	355.00	\$ 41,971,187	374.75
DPD DIRECT ADMINISTRATION	\$ 3,426,140	19.75	\$ 490,000		\$ 3,916,140	19.75
DPD DIVISION 1	\$ 9,889,378			110.00	\$ 9,889,378	110.00
DPD DIVISION 2	\$ 5,574,013			62.00	\$ 5,574,013	62.00
DPD DIVISION 3	\$ 6,922,564			77.00	\$ 6,922,564	77.00
DPD DIVISION 4	\$ 9,529,764			106.00	\$ 9,529,764	106.00
ASSIGNED COUNSEL	\$ 3,490,720				\$ 3,490,720	
EXPERT SERVICES	\$ 2,648,608				\$ 2,648,608	

Because it is mid-year and an interim solution, the section-level reporting will not be coded into the financial accounting system until the Council adopts a final structure; year-end timing may also affect when it will be practical to code the new sections into the system.

Review of Interim Supplemental Request

Council staff have continued to review the proposed interim supplemental request, including obtaining detailed rate and personnel costs for information technology expenses. The information received has not changed the conclusions made to date in previous staff reports. As discussed in the May 1 staff report, the proposed supplemental appears to support reasonably necessary elements of an interim county public defense system such as working towards a unified case management system and removing proposals for expenditures with more permanent impacts such as fleet acquisitions. **With the proposed striking amendment, the interim supplemental request is ready for possible action.**

Background Previously Provided

Below is a restatement of background previously provided about the interim supplemental request.

The proposed interim supplemental budget ordinance would change the Office of Public Defense appropriation to the Department of Public Defense appropriation. It would provide a supplemental appropriation of \$4 million from the General Fund (at a net cost of \$2.3 million after removing the double-counting of an internal transfer from the General Fund to the capital projects).

It includes the following appropriations:

- \$41,481,187 and 19.75 FTE which is the OPD 2013 adopted budget
- \$496,000 to the department for onboarding personnel, supplies, and contingency (transmitted as \$490,000 that will need a technical amendment)

- 355 additional FTE to cover the migration of defender agency employees to the county
- \$1,529,000 in King County Information Technology capital projects for computers and the case management system, and
- \$250,000 in Building Repair and Replacement capital projects for facilities planning and tenant improvement contingency.

This supplemental request is \$882,000 less than the supplemental request accompanying the original public defense proposal (PO 2013-0208 and -0209), because it is based on amounts deemed necessary for implementation of the interim solution only. **Further supplemental requests would be expected depending on the final public defense structure approved by the Council.** The table below compares the original supplemental request (PO 2013-0209) to the proposed interim supplemental request (PO 2013-0216).

Table 3. Comparison of Original Supplemental to Interim Supplemental

	2013-0209 Original	2013-0216 Interim	Difference
Personnel onboarding	\$499,000	\$442,000	(\$57,000)
Supplies	\$124,000	\$54,000	(\$70,000)
Vehicle purchase	\$755,000	\$0	(\$755,000)
Computers	\$780,000	\$780,000	\$0
Case Management System	\$749,000	\$749,000	\$0
Facilities planning	\$100,000	\$100,000	\$0
Tenant improvements	\$150,000	\$150,000	\$0
Total	\$3,157,000	\$2,275,000	(\$882,000)
FTEs	275	355	80

Proposed Striking Amendment

There is a proposed technical striking amendment. The annual appropriation for OPD is removed based on advice from the Code Reviser that it is not necessary to reappropriate the budget to convert it to the Department of Public Defense. The remaining content shows only the supplemental amounts requested. Typos in the body and in the Attachment A General Government CIP are also corrected.

NEXT STEPS

Council staff will continue to incorporate any further Council direction on proposed legislation.

Staff will continue to work with OPD to clarify their proposed changes to the public defense chapter, K.C.C. Chapter 2.60. The "clean-up" of Chapter 2.60 can occur either at adoption of the final public defense structure or at a later date by separate ordinance.

Depending on the sequence of Council action on the proposed ordinances, staff will also work on amendments to have the remaining pieces of legislation reflect any decisions made on related legislation.

ATTACHMENTS

1. Striking Amendment (S1) to PO 2013-0212
2. Title Amendment (T1) to PO 2013-0212
3. Proposed Ordinance 2013-0212 (Charter Amendment)
4. Striking Amendment (S1) to PO 2013-0242
5. Proposed Ordinance 2013-0242 (Implementing Ordinance to 0212)
6. Proposed Ordinance 2013-0237 (Public Defender District)
7. Striking Amendment (S1) to PO 2013-0215
8. Title Amendment (T1) to PO 2013-0215
9. Proposed Ordinance 2013-0215 (Interim Ordinance)
10. Striking Amendment (S1) to PO 2013-0216 with Att. A. revised
11. Title Amendment (T1) to PO 2013-0216
12. Proposed Ordinance 2013-0216 with Att. A. (Interim Supplemental)
13. Transmittal letter to 2013-0215 and 0216
14. Fiscal notes to 2013-0216, revised

S1

nw

Sponsor: Patterson, Lambert

Proposed No.: 2013-0212

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2013-0212, VERSION**

2 **1**

3 On page 2, beginning on line 20, strike everything through page 6, line 116, and insert:

4 "BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 SECTION 1. There shall be submitted to the qualified voters of King County for
6 their approval and ratification or rejection, at the next general election to be held in this
7 county occurring more than forty-five days after the enactment of this ordinance, an
8 amendment to the King County Charter, amending Section 350.20 of the King County
9 Charter, adding a new Section 350.20.60 and a new Section 350.20.65 to the King
10 County Charter, amending Section 890 of the King County Charter and adding a new
11 Section 899 to the King County Charter, as set forth below:

12 **Section 350.20. Executive Departments.**

13 The executive departments shall consist of the department of assessments, the
14 department of judicial administration, the department of elections, the department of
15 public defense and those agencies of the executive branch which are primarily engaged in
16 the execution and enforcement of ordinances and statutes concerning the public peace,

17 health and safety and which furnish or provide governmental services directly to or for
18 the residents of the county.

19 **Section 350.20.60. Department of Public Defense.**

20 The department of public defense shall be administered by the county public
21 defender, who shall perform the indigent public defense duties specified by general law,
22 including the federal and state constitutions. The department of public defense shall be
23 subject to the career service personnel system and shall utilize the services of the
24 administrative offices and the executive departments, but it shall not be abolished or have
25 its duties, as established in this section, decreased by the county council or the county
26 executive. The duties of the department of public defense shall include providing legal
27 counsel and representation to indigent individuals in legal proceedings, including those in
28 the superior and district courts for King County and in appeals from those courts, to the
29 extent required under the sixth amendment to the United States Constitution or Article I,
30 Section 22, of the Constitution of the State of Washington. Additional duties may be
31 prescribed by ordinance.

32 The county public defender shall be appointed by the county executive, subject to
33 confirmation by the county council, to a term of four years, coterminous with the term of
34 the county prosecuting attorney, unless removed earlier by the county council for cause,
35 including the grounds for vacancy for elective office under Section 680 of this charter
36 and such other grounds as the council may prescribe by ordinance. The county executive
37 shall appoint the county public defender from among three candidates recommended by
38 the public defense advisory board. The county executive may reappoint the county
39 public defender to additional four-year terms, subject to confirmation by the county

40 council. Confirmation of the appointment and reappointment of the county public
41 defender shall require the affirmative votes of at least five members of the county
42 council. Removal shall require six affirmative votes. If the office of county public
43 defender is vacant before the end of the term of office, the person appointed as a
44 replacement shall serve the remainder of the term, rather than beginning a new term of
45 four years.

46 To be eligible for appointment, the county public defender must be admitted to
47 practice law in the courts of the state of Washington and have at least ten years of
48 experience as an attorney primarily practicing criminal defense. The county council may
49 establish by ordinance additional qualifications for the county public defender. The
50 county public defender shall receive compensation as provided by ordinance.

51 **Section 350.65. Public Defense Advisory Board.**

52 The public defense advisory board shall review, advise, and report on the
53 department of public defense in a manner that may be prescribed by ordinance and, in the
54 event of a vacancy in the office of county public defender, recommend three candidates
55 from whom the county executive shall make an appointment to fill the vacancy, subject
56 to confirmation by the county council. The county council shall prescribe by ordinance
57 the board's membership, process and qualifications for appointment, rules and
58 procedures, and may prescribe by ordinance additional duties of the board.

59 **Section 890. Employee Representation.**

60 The county council may enact an ordinance providing for collective bargaining by
61 the county with county employees covered by the personnel system. If an ordinance
62 providing for collective bargaining is enacted, it shall not be subject to the veto power of

63 the county executive; and, except with respect to bargaining by the county with
64 employees of the department of public safety pursuant to Section 898 of this charter and
65 with the employees of the department of public defense pursuant to Section 899 of this
66 charter, it shall designate the county executive as the bargaining agent of the county. Any
67 agreement reached as a result of negotiations by the county bargaining agent with county
68 employees shall not have the force of law unless enacted by ordinance.

69 **Section 899. Department of Public Defense Employee Collective Bargaining.**

70 The county council may enact an ordinance providing for collective bargaining by
71 the county with employees of the department of public defense. The county executive
72 shall not have veto power over this ordinance. If such an ordinance is enacted, it shall
73 designate the county public defender as the bargaining agent of the county on all matters
74 concerning employees of the department of public defense except for compensation and
75 benefits, which shall be negotiated by the county executive as provided in Section 890 of
76 this charter. Any agreement reached as a result of negotiations by the county public
77 defender or the county executive with employees of the department of public defense
78 shall not have the force of law unless enacted by ordinance.

79 SECTION 2. The clerk of the council shall certify the proposition to the director
80 of the elections department, in substantially the following form, with such additions,
81 deletions or modifications as may be required by the prosecuting attorney:

82 Shall the King County Charter be amended to create an appointed office of
83 county public defender, a department of public defense, and a public
84 defense advisory board, and designate the county public defender as the
85 county's bargaining agent for all issues concerning employees of the

86 department of public defense except for compensation and benefits, which
87 would continue to be bargained by the county executive?"

88 **EFFECT:**

- 89 **1. Changes “public defense advisory committee” to “public defense advisory**
90 **board” in several places.**
- 91 **2. Changes “responsibilities” to “duties” in line 26.**
- 92 **3. Adds, at lines 31-32: “Additional duties may be prescribed by ordinance.”**
- 93 **4. Adds, at lines 34-35, a requirement that the term of the county public**
94 **defender be “coterminous with the term of the county prosecuting attorney.”**
- 95 **5. Changes “including but not limited to” to “including” in line 35, since the**
96 **context “but not limited to” would be redundant in the context.**
- 97 **6. Moves “Confirmation of the appointment and reappointment of the county**
98 **public defender shall require the affirmative votes of at least five members of**
99 **the county council. Removal shall require six affirmative votes.” to lines 40-**
100 **42.**
- 101 **7. Adds, at lines 42-45, “If the office of county public defender becomes vacant**
102 **before the end of the term of office, the person appointed as a replacement**
103 **shall serve the remainder of the term, rather than beginning a new term of**
104 **four years.”**
- 105 **8. In lines 52-54, changes “oversee” to “review, advise, and report on” in**
106 **describing the role of the public defense advisory board, to avoid any**
107 **implication that the board has authority over the department, and provides**

108 **that the board shall perform that role “in a manner that may be prescribed**
109 **by ordinance.”**

110 **9. Changes lines 54-57 to provide that the Council “may” prescribe by**
111 **ordinance “additional duties” of the board.**

112 **10. Deletes original Section 3, eliminating the requirement that the county public**
113 **defender and the county executive submit a joint proposal for legislation**
114 **concerning the process for joint bargaining. It is intended that separate**
115 **legislation will address that process without the need for a joint proposal**
116 **from the public defender and the executive.**



5-15-13

nw

Sponsor: Patterson, Lambert

Proposed No.: 2013-0212

1 TITLE AMENDMENT TO PROPOSED ORDINANCE 2013-0212, VERSION 1

2 On page 1, beginning on line 1, strike lines 1 through 20, and insert:

3 "AN ORDINANCE adding a new Section 350.20.60,
4 entitled "Department of Public Defense," to the King
5 County Charter, creating a department of public defense
6 and an appointed office with the title of "county public
7 defender"; adding a new Section 350.20.065 to the King
8 County Charter, creating a public defense advisory board;
9 adding a new Section 899 to the King County Charter,
10 designating the county public defender as the county's
11 bargaining agent for all issues concerning employees of the
12 department of public defense except for compensation and
13 benefits; amending Section 350.20 of the King County
14 Charter; amending Section 890 of the King County Charter;
15 and submitting the same to the voters of the county for their
16 ratification or rejection at the November 2013 general
17 election."

18 **EFFECT: Amends the title to conform to Striking Amendment S1.**

KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

May 14, 2013

Ordinance

Proposed No. 2013-0212.1

Sponsors Patterson

1 AN ORDINANCE adding a new Section 350.20.60,
2 entitled "Department of Public Defense," to the King
3 County Charter, creating a department of public defense
4 and an appointed office with the title of "county public
5 defender"; adding a new Section 350.20.065 to the King
6 County Charter, creating a public defense advisory
7 committee; adding a new Section 899 to the King County
8 Charter, designating the county public defender as the
9 county's bargaining agent for all issues concerning
10 employees of the department of public defense except for
11 compensation and benefits; amending Section 350.20 of the
12 King County Charter; amending Section 890 of the King
13 County Charter; submitting the same to the voters of the
14 county for their ratification or rejection at the November
15 2013 general election; and requiring the county public
16 defender and the county executive to submit a joint
17 proposal to the council for legislation to facilitate
18 implementation of the collective bargaining provisions of
19 the charter amendment if it is approved by the voters.

20 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

21 SECTION 1. There shall be submitted to the qualified voters of King County for
22 their approval and ratification or rejection, at the next general election to be held in this
23 county occurring more than forty-five days after the enactment of this ordinance, an
24 amendment to the King County Charter, amending Section 350.20 of the King County
25 Charter, adding a new Section 350.20.60 and a new Section 350.20.65 to the King
26 County Charter, amending Section 890 of the King County Charter and adding a new
27 Section 899 to the King County Charter, as set forth below:

28 **Section 350.20. Executive Departments.**

29 The executive departments shall consist of the department of assessments, the
30 department of judicial administration, the department of elections, the department of
31 public defense and those agencies of the executive branch which are primarily engaged in
32 the execution and enforcement of ordinances and statutes concerning the public peace,
33 health and safety and which furnish or provide governmental services directly to or for
34 the residents of the county.

35 **Section 350.20.60. Department of Public Defense.**

36 The department of public defense shall be administered by the county public
37 defender, who shall perform the indigent public defense duties specified by general law,
38 including the federal and state constitutions, and shall be overseen by the public defense
39 advisory committee. The department of public defense shall be subject to the career
40 service personnel system and shall utilize the services of the administrative offices and
41 the executive departments, but it shall not be abolished or have its duties, as established
42 in this section, decreased by the county council or the county executive. The

43 responsibilities of the department of public defense shall include providing legal counsel
44 and representation to indigent individuals in legal proceedings, including those in the
45 superior and district courts for King County and in appeals from those courts, to the
46 extent required under the sixth amendment to the United States Constitution or Article I,
47 Section 22, of the Constitution of the state of Washington.

48 The county public defender shall be appointed by the county executive, subject to
49 confirmation by the county council, to a term of four years, unless removed earlier by the
50 county council for cause, including but not limited to the grounds for vacancy for elective
51 office under Section 680 of this charter and such other grounds as the council may
52 prescribe by ordinance. The county executive shall appoint the county public defender
53 from among three candidates recommended by the public defense advisory committee.
54 The county executive may reappoint the county public defender to additional four-year
55 terms, subject to confirmation by the county council. To be eligible for appointment, the
56 county public defender must be admitted to practice law in the state of Washington and
57 have at least ten years of experience as an attorney primarily practicing criminal defense.
58 The county council may establish by ordinance additional qualifications for the county
59 public defender. Confirmation of the appointment and reappointment of the county
60 public defender shall require the affirmative votes of at least five members of the county
61 council. Removal shall require six affirmative votes. The county public defender shall
62 receive compensation as provided by ordinance.

63 **Section 350.65. Public Defense Advisory Committee.**

64 The public defense advisory committee shall oversee the department of public
65 defense and, in the event of a vacancy in the office of county public defender,

66 recommend three candidates from whom the county executive shall make an appointment
67 to fill the vacancy, subject to confirmation by the county council. The committee's
68 duties, membership, process and qualifications for appointment, rules and procedures,
69 shall be prescribed by ordinance.

70 **Section 890. Employee Representation.**

71 The county council may enact an ordinance providing for collective bargaining by
72 the county with county employees covered by the personnel system. If an ordinance
73 providing for collective bargaining is enacted, it shall not be subject to the veto power of
74 the county executive; and, except with respect to bargaining by the county with
75 employees of the department of public safety pursuant to Section 898 of this charter and
76 with the employees of the department of public defense pursuant to Section 899 of this
77 charter, it shall designate the county executive as the bargaining agent of the county.
78 Any agreement reached as a result of negotiations by the county bargaining agent with
79 county employees shall not have the force of law unless enacted by ordinance.

80 **Section 899. Department of Public Defense Employee Collective Bargaining.**

81 The county council may enact an ordinance providing for collective bargaining by
82 the county with employees of the department of public defense. The county executive
83 shall not have veto power over this ordinance. If such an ordinance is enacted, it shall
84 designate the county public defender as the bargaining agent of the county on all matters
85 concerning employees of the department of public defense except for compensation and
86 benefits, which shall be negotiated by the county executive as provided in Section 890 of
87 this charter. Any agreement reached as a result of negotiations by the county public

88 defender or the county executive with employees of the department of public defense
89 shall not have the force of law unless enacted by ordinance.

90 SECTION 2. The clerk of the council shall certify the proposition to the director
91 of the elections department, in substantially the following form, with such additions,
92 deletions or modifications as may be required by the prosecuting attorney:

93 Shall the King County Charter be amended to create an appointed office of
94 county public defender, a department of public defense, and a public
95 defense advisory committee, and designate the county public defender as
96 the county's bargaining agent for all issues concerning employees of the
97 department of public defense except for compensation and benefits, which
98 would continue to be bargained by the county executive?

99 SECTION 3. Within ninety days after the county public defender takes office
100 pursuant to the charter amendment in section 1 of this ordinance, the county executive
101 and the county public defender shall submit to the county council a joint proposal for
102 legislation establishing a process of consultation and collaboration between the executive
103 and the public defender in advance of collective bargaining negotiations concerning
104 employees of the department of public defense. The process shall be designed to
105 promote successful implementation of the charter amendment by identifying and
106 resolving any disagreements between the executive and the public defender concerning
107 the division of bargaining authority, the positions to be taken on issues expected to arise
108 during collective bargaining or other matters that have the potential to interfere with
109 collective bargaining. The process shall provide that the executive and the public
110 defender shall promptly submit a confidential, detailed, written report to the chair of the

111 county council and the chair of the council's labor policy committee describing any such
112 disagreement that the executive and the public defender are unable to resolve. The
113 process shall further provide that neither the executive nor the public defender shall
114 propose or agree to the inclusion of language in any collective bargaining agreement
115 concerning employees of the department of public defense without conferring with one
116 another.
117

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None

S1

5-15-13

nw

Sponsor: Patterson, Lambert

Proposed No.: 2013-0242

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2013-0242, VERSION**

2 **1**

3 On page 2, beginning on line 28, strike everything through page 17, line 357, and insert:

4 " BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 SECTION 1. Findings:

6 A. Public defense services are mandated by the United States Constitution, the
7 Washington State Constitution and state law.

8 B. The Sixth Amendment of the United States Constitution and Article I, Section
9 22, of the Washington State Constitution guarantee assistance of counsel to every citizen
10 accused of a matter where loss of liberty is possible.

11 C. Since the 1970s, King County has contracted with private, nonprofit
12 corporations for the provision of most indigent defense services. These private, nonprofit
13 corporations were viewed by the county and the corporations as independent contractors
14 and as a result the employees of the private, nonprofit corporations were not considered
15 county employees and did not receive county benefits nor were they enrolled in the
16 Public Employees' Retirement System.

17 D. In January 2006, a class action lawsuit was filed against King County,
18 alleging that the employees of the private, nonprofit corporations were county employees
19 and that King County had a duty to enroll them in the Public Employees' Retirement
20 System (PERS).

21 E. In February 2009, a Pierce County superior court judge entered an injunction
22 requiring employees of the King County public defense contractors to be enrolled in
23 PERS. Enforcement of that injunction was stayed on appeal.

24 F. In August 2011, the Washington Supreme Court affirmed the trial court's
25 decision in a five to four decision. The county's motion for reconsideration, which was
26 supported by the State of Washington as amicus curiae was denied.

27 G. In March 2012, the trial court entered an order requiring King County to
28 enroll the then-current employees of the private, nonprofit corporations in the Public
29 Employees' Retirement System, which the county did.

30 H. On March 18, 2013, the King County council adopted Ordinance 17537
31 approving a proposed settlement agreement that would recognize the current employees
32 of the private, nonprofit corporations as county employees on July 1, 2013. As of the
33 effective date of this ordinance, that settlement is still subject to and awaiting final and
34 nonappealable judicial approval.

35 I. The county intends to maintain the high quality of public defense services that
36 public defense attorneys and staff have delivered and to which King County has long
37 been committed, by promoting independence from political influence, a quality work
38 force, and operational efficiency in the provisions of public defense services.

39 J. The county values the expertise and interest of public defenders and recognizes
40 the contributions they have made to establish a foundation of a public defense service
41 system on which to build a new structure. The county desires to work with the agency
42 directors in a close and collaborative process during the transition to a new management
43 structure that achieves the county's goals for public defense.

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

46 ~~((There is hereby established within the department of community and human
47 services the office of public defense. A public director of the office of public defense
48 shall be appointed by the county executive and approved by the county council. The
49 county executive shall consult with representatives of the criminal justice system and the
50 broader community during the recruitment and selection of the appointee.))~~ A. The
51 duties of the department of public defense include:

52 1. Providing publicly-financed legal counsel and representation to indigent
53 individuals in the legal proceedings described in section 2.60.050.

54 2. Providing legal defense services in an efficient manner that ensures effective
55 representation at reasonable cost to the county;

56 3. Screening and determining eligibility for publicly-financed legal defense
57 services. Determination of indigency is controlled by chapter 10.101 RCW. In
58 determining eligibility and seeking contribution, when appropriate, the department shall
59 comply with the applicable provisions of chapter 10.101 RCW;

60 4. Assigning cases to public defense attorneys consistent with the federal and
61 state constitutions and standards; and

62 5. Establishing and maintaining an assigned counsel panel that includes
63 attorneys acceptable to the department who wish to participate in the defense of eligible
64 persons, and assignment of cases to assigned counsel where conflicts of interest or other
65 special circumstances exist which require use of assigned counsel.

66 B. The department of public defense should have four divisions.

67 SECTION 3. Ordinance 14412, Section 3, as amended, and K.C.C. 2.60.027 are
68 each hereby amended to read as follows:

69 ~~((The duties of the director of the office of public defense shall include the~~
70 ~~following:~~

71 ~~——— A. Manage the office of public defense;~~

72 ~~——— B. Ensure the office of public defense employs the needed technical and public~~
73 ~~defense expertise to ensure effective delivery of public defense services;~~

74 ~~——— C. Represent the department in all city, county, state and federal forums where~~
75 ~~the defense perspective is required; and~~

76 ~~——— D. Develop appropriate standards and guidelines for the qualification and~~
77 ~~experience level of attorneys and paraprofessionals.))~~

78 A. The duties of the county public defender include:

79 1. Managing the department of public defense;

80 2. Ensuring that the department employs the needed technical and public
81 defense expertise to ensure effective delivery of public defense services;

82 3. Preparing an annual budget for the department that evaluates and forecasts
83 service delivery levels and program expenses for contractors, assigned counsel and
84 administration. Such evaluations and forecasts shall include an analysis of the impact, if

85 any, of changes in the procedures or practices of the courts, prosecutor, police, public
86 defense contractors, or other elements of the criminal justice system;

87 4. Representing the department in city, county, state, federal and private forums
88 when the county public defender considers it appropriate to do so;

89 5. Advocating and working for social justice and criminal justice reform related
90 to public defense;

91 6. Ensuring that the department of public defense meets the Washington State
92 Standards for Indigent Defense Services;

93 7. Developing and maintaining appropriate standards and guidelines for the
94 qualification and experience of public defense attorneys and paraprofessionals;

95 8. Implementing, to the extent feasible, the Ten Principles of a Public Defense
96 Delivery System that were approved by the American Bar Association House of
97 Delegates in February of 2002, and reporting on April 1 of each year, in the manner
98 prescribed in section 4.J, on the status of that implementation; and

99 9. Working collaboratively with the public defense advisory board and
100 providing relevant, non-privileged information to the board upon its reasonable request.

101 B. The county public defender shall be appointed by the county executive,
102 subject to confirmation by the county council, from among three candidates nominated
103 by the public defense advisory board.

104 C. The county public defender shall be an attorney admitted to practice law in the
105 courts of the state of Washington and an “active” member of the Washington State Bar
106 Association in good status and shall have, at the time of appointment, at least ten years of

107 experience as an attorney primarily practicing criminal defense, including both felonies
108 and misdemeanors, as well as supervisory and managerial experience.

109 D. The term of office of the county public defender is four years, coterminous
110 with the term of the county prosecuting attorney.

111 E. The county executive may reappoint the county public defender to additional
112 four-year terms, subject to confirmation by the county council.

113 F. The county council may remove the county public defender from office for
114 cause, which includes but is not limited to:

115 1. The grounds for vacancy of elective office under Section 680 of the King
116 County Charter;

117 2. Failure to meet the applicable legal requirements for serving as county public
118 defender, as set forth in the county charter or other applicable law;

119 3. Conviction of a crime; and

120 4. A finding or stipulation of misconduct under the Washington Rules of
121 Professional Conduct.

122 G. Confirmation of the appointment and reappointment of the county public
123 defender requires the affirmative votes of at least five members of the county council.

124 Removal requires at least six affirmative votes.

125 H. If the office of county public defender becomes vacant before the end of the
126 term of office, the person appointed as a replacement shall serve the remainder of the
127 term, rather than beginning a new four-year term.

128 I. The county public defender shall receive compensation at the same rate as the
129 prosecuting attorney.

130 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 2.60 a
131 new section to read as follows:

132 A. The public defense advisory board shall: regularly review the activities and
133 plans of the department of public defense, make recommendations to the county public
134 defender on matters concerning the department, prepare reports as required in this section
135 and as deemed appropriate by the board; and when there is a vacancy in the office of
136 county public defender, as provided in subsection K of this section, recommend to the
137 county executive three possible candidates to fill the vacancy.

138 B. In performing its duties, the board shall work collaboratively with the county
139 public defender and may reasonably request relevant, non-privileged information from
140 the county public defender.

141 C. The board shall consist of ten members, shall establish its own rules of
142 procedure, subject to the county charter, the county code and other applicable law, and
143 shall choose its own chair.

144 D. The board shall consist of one representative of each of the following:

- 145 1. The Washington Association of Criminal Defense Lawyers;
- 146 2. The Washington state Office of Public Defense;
- 147 3. The Washington Defender Association;
- 148 4. The King County Bar Association;
- 149 5. A nonpartisan organization active in King County that focuses on mental
150 health issues, such as the King County mental health advisory board;

151 6. A nonpartisan organization active in King County that focuses on substance
152 abuse issues, such as the King County alcoholism and substance abuse administrative
153 board;

154 7. A nonpartisan organization active in King County that focuses on issues
155 concerning military veterans, such as the King County veterans program advisory board;

156 8. A nonpartisan organization active in King County that focuses on issues
157 related to poverty;

158 9. A nonpartisan organization active in King County that focuses on juvenile
159 justice issues; and

160 10. A nonpartisan organization active in King County that focuses on issues of
161 concern to people of color, such as a minority bar association.

162 E. The county council shall appoint each board member from among one or more
163 individuals nominated by the entity that the member will represent.

164 F. Members of the board shall serve staggered three-year terms and until their
165 successors are nominated and confirmed, except that the members designated in
166 subsections D.1, D.2 and D.3 of this section shall serve an initial term of one year and the
167 members designated in subsections D.4, D.5 and D.6 of this section shall serve an initial
168 term of two years. If a member leaves the board midterm, the person appointed as a
169 replacement shall serve the remainder of the term, rather than beginning a new term of
170 three years. The county council may reappoint board members for additional three-year
171 terms and may remove any board member who is unable or unwilling to participate
172 effectively in the work of the board or who engages in misconduct that undermines the
173 member's effectiveness as a board member. Removal of a board member requires the

174 affirmative votes of at least six councilmembers. Members of the board shall not be
175 compensated for the performance of their duties as members of the board, but may be
176 paid subsistence rates and mileage in amounts consistent with county policy.

177 G. The process for filling vacancies on the board in the board seats designated in
178 subsections D.5 through D.10 is:

179 1. The chair of the council shall notify councilmembers of vacancies on the
180 committee and shall direct council staff to develop a job description and list of
181 qualifications for board members, as well as an application form;

182 2. The open positions shall be advertised at a minimum in the county's
183 newspaper of record;

184 3. The chair of the council shall direct council staff to develop administrative
185 procedures for accepting applications. All applications shall be forwarded to all county
186 councilmembers. Applications shall also be forwarded for review to each public defense
187 advisory board member, and the board and any board member may offer written
188 comments to the law, justice, health and human services committee of the council, or its
189 successor;

190 4. The Law, Justice, Health and Human Services Committee of the council, or
191 its successor, shall review applications and may interview applicants. The committee
192 may recommend to the full council the appointment of members to the public defense
193 advisory board; and

194 5. Appointments shall be made by the full council by motion.

195 H. Each member of the advisory board shall have substantial experience and
196 expertise that are relevant to the work of the department of public defense and shall have

197 an ability and willingness to commit the time necessary to attend meetings and participate
198 effectively as a member of the board. A majority of the members should have substantial
199 experience in providing indigent defense representation. To the extent practicable, the
200 board membership shall reflect the diversity of the clients of the department of public
201 defense. A member may not, while serving on the committee, hold elective public office
202 (except precinct committee officer), be a candidate for elective public office (except
203 precinct committee officer) or serve as a prosecuting attorney, a judge, or an employee of
204 a prosecuting attorney or court.

205 I. The board shall meet at least once every two months and shall issue a report to
206 the executive and the council at least twice each calendar year: once on the state of
207 county public defense and once on the board's review of the proposed budget for public
208 defense.

209 J. Any reporting to the council under this chapter shall be made in the form of
210 paper and electronic copies of the report filed with the clerk of the council, who shall
211 forward electronic copies to all councilmembers, to the lead staff of the budget and fiscal
212 management committee or its successor and to the lead staff of the law, justice, health
213 and human services committee or its successor.

214 K. Within ninety days after a vacancy occurs, or the board learns of an
215 anticipated vacancy, in the office of county public defender, the public defense advisory
216 board shall provide to the county executive, and contemporaneously to the clerk of the
217 county council, the names of exactly three qualified candidates to fill the vacancy,
218 together with copies of the candidates' biographical and descriptive information and all
219 other written information upon which the board relied in choosing the three candidates.

220 The board shall not rank the candidates, but may summarize the particular strengths of
221 each candidate.

222 SECTION 5. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are
223 each hereby amended to read as follows:

224 Legal defense services through the department of public defense (~~(program)~~) shall
225 be made available to all eligible persons for whom counsel is constitutionally required. In
226 addition, legal defense services through the department of public defense (~~(program)~~)
227 (~~(will)~~) shall be made available, when funds are available therefor, to all eligible persons
228 (~~(when there may be some factual likelihood of)~~) in legal proceedings arising in King
229 County that may result in such (~~(person's)~~) persons' loss of liberty by an act of King
230 County or any of its agencies, including but not limited to criminal proceedings alleging a
231 violation of any law of the (~~(State))~~ state of Washington or ordinance of King County,
232 juvenile matters, mental illness and similar commitment proceedings, revocations and
233 habeas corpus proceedings (~~(when such arise in King County)~~); and to eligible parents
234 and children in dependency proceedings arising in King County.

235 Legal defense services through the department of public defense (~~(program)~~) may
236 be made available, at his or her expense, to a person charged in King County with a
237 felony of public notoriety when the court finds that the defendant is unable to employ
238 adequate private counsel as a result of such public notoriety. The (~~(administrator of~~
239 ~~the)) department of public defense (~~(program)~~) shall establish a reasonable fee for such
240 legal defense services, subject to the approval of the court.~~

241 SECTION 6. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
242 each hereby amended to read as follows:

243 A. A defendant requesting counsel at public expense shall pay a processing fee of
244 twenty-five dollars as reimbursement to ~~((King County))~~ the county for the
245 administrative costs and expenses incurred in the processing of the application. The
246 processing fee~~((s))~~ is payable at the time the request for public counsel is made to the
247 ~~((office))~~ department of public defense. Processing fees are not refundable, even if the
248 defendant is determined to be not eligible for counsel at public expense. A defendant
249 ~~((will))~~ shall not be denied counsel because the defendant cannot pay the processing fee.
250 All processing fee payments received shall be credited to the county current expense
251 fund.

252 B. The department of public defense may enter into agreements to provide
253 indigent defense services to the state of Washington, tribal governments and
254 municipalities in King County on a full cost recovery basis, subject to council approval
255 by ordinance when required by law.

256 SECTION 7. Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060 are
257 each hereby amended to read as follows:

258 To be eligible to receive legal defense services through the department of public
259 defense ~~((program))~~ at no cost, the person must be financially unable to obtain adequate
260 representation without substantial hardship to himself and his family and there must be
261 some factual likelihood that he will be deprived of his liberty. If a person has some
262 resources available which can be used to secure representation but not sufficient
263 resources to pay the entire costs of private legal services without substantial hardship to
264 himself and his family, the department of public defense ~~((program))~~ shall determine how

265 much the person shall pay for the legal defense services provided through the ((public
266 defense program)) department.

267 NEW SECTION. SECTION 8. There is hereby added to K.C.C. chapter 2.60 a
268 new section to read as follows:

269 The department shall manage cases and assign counsel in a manner that avoids
270 conflicts of interest, including those that could arise from division-wide concurrent
271 representation of more than one client involved in a single matter, such as codefendants
272 or defendant and a witness or suspect in the case or correspondents or represented
273 members of a family in a dependency case or a respondent and an adverse witness in a
274 civil dependency case. If the department is unable to provide in-house representation
275 when a conflict exists, it shall assign counsel from the assigned counsel panel. The
276 department shall develop adopt a policy to determine when a conflict exists and to avoid
277 conflicting representation.

278 SECTION 9. Ordinance 197, Section 1, as amended, and K.C.C. 3.16.010 are
279 each hereby amended as follows:

280 A. In accordance with Sections 890, ~~((and))~~ 898 and 899 of the King County
281 Charter, the King County executive is designated bargaining agent for King County,
282 except as provided in subsections B and C of this section.

283 B.1. The sheriff is the designated bargaining agent of the county on all
284 department of public safety matters except for compensation and benefits for employees
285 of the department of public safety. The county executive is the designated bargaining
286 agent on compensation and benefits for employees of the department of public safety.

287 2. The sheriff and the executive shall consult and collaborate with each other in
288 advance of collective bargaining negotiations with representatives of the employees of
289 the department of public safety. The sheriff and the executive shall identify respective
290 areas of bargaining authority, the positions to be taken on issues expected to arise during
291 collective bargaining and other matters that have the potential to affect collective
292 bargaining. The sheriff and the executive shall make a good faith effort, including
293 meeting if necessary, to resolve any disagreements between them concerning such
294 matters.

295 3. ~~((H))~~ To the extent that the sheriff and the executive are unable to resolve
296 ~~((any))~~ such disagreements, the sheriff and the executive shall promptly submit to each
297 councilmember a confidential, detailed, joint written report describing the disagreement.

298 4. Neither the executive nor the sheriff may propose or agree to the inclusion of
299 language in any collective bargaining agreement, memorandum of agreement or
300 memorandum of understanding concerning employees of the department of public safety
301 without conferring with each other, except regarding compensation and benefits.

302 C.1. The county public defender is the designated bargaining agent of the county
303 on all department of public defense matters except for compensation and benefits for
304 employees of the department of public defense. The county executive is the designated
305 bargaining agent on compensation and benefits for employees of the department of public
306 defense.

307 2. The county public defender and the executive shall consult and collaborate
308 with each other in advance of collective bargaining negotiations with representatives of
309 the employees of the department of public defense. The county public defender and the

310 executive shall identify respective areas of bargaining authority, the positions to be taken
311 on issues expected to arise during collective bargaining and other matters that have the
312 potential to affect collective bargaining. The county public defender and the executive
313 shall make a good faith effort, including meeting if necessary, to resolve any
314 disagreements between them concerning such matters.

315 3. To the extent that the county public defender and the executive are unable to
316 resolve such disagreements, the county public defender and the executive shall promptly
317 submit to each councilmember a confidential, detailed, joint written report describing the
318 disagreement.

319 4. Neither the executive nor the county public defender may propose or agree to
320 the inclusion of language in any collective bargaining agreement, memorandum of
321 agreement or memorandum of understanding concerning employees of the department of
322 public defense without conferring with each other.

323 SECTION 10. A. Ordinance 8257, Section 3, as amended, and K.C.C. 2.60.30
324 are each hereby repealed.

325 B. Ordinance 383, Section 4, as amended, and K.C.C. 2.60.040 are each hereby
326 repealed.

327 C. Ordinance 8275, Section 6, and K.C.C. 2.60.070 are each hereby repealed.

328 SECTION 11. This ordinance takes effect only upon certification that the charter
329 amendment that the ordinance implements (Proposed Ordinance 2013-0212) has been
330 approved by the voters.

331 "

332 **EFFECT:**

- 333 **1. Revises the findings to conform to related legislation.**
- 334 **2. Provides at line 66 that the department of public defense should have four**
335 **divisions.**
- 336 **3. At lines 105-06, adds a requirement that the county public defender be “in**
337 **good status” as an active member of the Washington State Bar Association.**
- 338 **4. Correct a technical error in line 137 by changing “council” to “executive.”**
- 339 **5. At lines 160-61, changes the wording to conform to the form of the**
340 **preceding sections.**
- 341 **6. At lines 177-78, makes clear that the appointment process described in**
342 **that section applies only to the advisory board seats described in sections D.5**
343 **through D.10.**
- 344 **7. At lines 202-03, exempts precinct committee officers from the exclusion of**
345 **elected officials and candidates from service on the public defense advisory board.**

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

May 14, 2013

Ordinance

Proposed No. 2013-0242.1

Sponsors Patterson and Lambert

1 AN ORDINANCE implementing the charter amendment
2 creating the department of public defense; establishing the
3 duties and functions of the department of public defense
4 and of the county public defender; establishing the
5 qualifications for the county public defender; establishing
6 cause for removal of the county public defender from
7 office; establishing duties, membership, process and
8 qualifications for appointment, rules and procedures of the
9 public defender advisory board; defining eligibility for
10 receiving legal defense services at no cost; and designating
11 the county public defender as the bargaining agent of the
12 county on all matters concerning employees of the
13 department of public defense except for compensation and
14 benefits, which shall be negotiated by the county executive;
15 amending Ordinance 8257, Section 2, as amended, and
16 K.C.C. 2.60.020, Ordinance 14412, Section 3, as amended,
17 and K.C.C. 2.60.027, Ordinance 8257, Section 3, as
18 amended, and K.C.C. 2.60.030, Ordinance 383, Section 5,
19 as amended, and K.C.C. 2.60.050, Ordinance 10167,

20 Section 1, as amended, and K.C.C. 2.60.054, Ordinance
21 383, Section 6, as amended, and K.C.C. 2.60.060 and
22 Ordinance 197, Section 1, as amended, and K.C.C.
23 3.16.010, adding new sections to K.C.C. chapter 2.60 and
24 repealing Ordinance 8257, Section 3, as amended, and
25 K.C.C. 2.60.030, Ordinance 383, Section 4, as amended,
26 and K.C.C. 2.60.040 and Ordinance 8257, Section 6, as
27 amended, and K.C.C. 2.60.070.

28 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

29 SECTION 1. Findings:

30 A. Public defense services are mandated by the United States Constitution, the
31 Washington State Constitution and state law.

32 B. The Sixth Amendment of the United States constitution and Article I, Section
33 22, of the Washington State Constitution guarantee assistance of counsel to every citizen
34 accused of a matter where loss of liberty is possible.

35 C. Since the 1970s, King County has contracted with private, nonprofit
36 corporations for the provision of most indigent defense services. These corporations
37 were viewed by the county and the corporations as independent contractors, and as a
38 result the employees of the corporations were not considered county employees and did
39 not receive county benefits, nor were they enrolled in the Public Employees' Retirement
40 System.

41 D. In January 2006, a class action lawsuit was filed against King County,
42 alleging that the employees of the corporations were county employees and that King
43 County had a duty to enroll them in the Public Employees' Retirement System.

44 E. In February 2009, a Pierce county superior court judge ruled that the county
45 had exercised such control over the corporations that they were effectively county
46 agencies and the employees were employees of the county for the purpose of enrollment
47 in the Public Employees' Retirement System.

48 F. In August 2011, the Washington Supreme Court affirmed the trial court's
49 decision in a five-to-four decision, and the county's motion for reconsideration was
50 denied.

51 G. In March 2012, the trial court entered an order requiring King County to
52 enroll the current employees of the public defense firms in the Public Employees'
53 Retirement System, which the county did.

54 H. On March 18, 2013, the King County council adopted Ordinance 17537,
55 approving a proposed settlement agreement that would recognize the current employees
56 of the public defense corporations as county employees on July 1, 2013.

57 I. The county intends to maintain the high quality of public defense services that
58 public defense attorneys and staff have delivered and to which King County has long
59 been committed, by ensuring to the greatest degree possible independence from political
60 influence and support for a quality work force and excellent performance. The county
61 also wishes to maximize resources, value and operational efficiency in the provision of
62 public defense services.

63 J. The county values the expertise and commitment of public defenders and
64 recognizes the contributions they have made to establish a foundation of public defense
65 services on which to build a new structure. The county wishes to work with the public
66 defense agency directors in a close and collaborative process during the transition to a
67 new management structure that achieves the county's goals for public defense.

68 SECTION2. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are
69 each hereby amended to read as follows:

70 ~~((There is hereby established within the department of community and human
71 services the office of public defense. A public director of the office of public defense
72 shall be appointed by the county executive and approved by the county council. The
73 county executive shall consult with representatives of the criminal justice system and the
74 broader community during the recruitment and selection of the appointee.))~~ The duties of
75 the department of public defense include:

76 A. Providing publicly-financed legal counsel and representation to indigent
77 individuals in the legal proceedings described in K.C.C. 2.60.050.

78 B. Providing legal defense services in an efficient manner that ensures effective
79 representation at reasonable cost to the county;

80 C. Screening and determining eligibility for publicly-financed legal defense
81 services. Determination of indigency is controlled by chapter 10.101 RCW. In
82 determining eligibility and seeking contribution, when appropriate, the department shall
83 comply with the applicable provisions of chapter 10.101 RCW;

84 D. Assigning cases to public defense attorneys consistent with the federal and
85 state constitutions and standards; and

86 E. Establishing and maintaining an assigned counsel panel that includes attorneys
87 acceptable to the department who wish to participate in the defense of eligible persons,
88 and assignment of cases to assigned counsel where conflicts of interest or other special
89 circumstances exist which require use of assigned counsel.

90 SECTION 3. Ordinance 14412, Section 3, as amended, and K.C.C. 2.60.027 are
91 each hereby amended to read as follows:

92 ~~((The duties of the director of the office of public defense shall include the~~
93 ~~following:~~

94 ~~A. Manage the office of public defense;~~

95 ~~B. Ensure the office of public defense employs the needed technical and public~~
96 ~~defense expertise to ensure effective delivery of public defense services;~~

97 ~~C. Represent the department in all city, county, state and federal forums where~~
98 ~~the defense perspective is required; and~~

99 ~~D. Develop appropriate standards and guidelines for the qualification and~~
100 ~~experience level of attorneys and paraprofessionals.))~~

101 A. The duties of the county public defender include:

102 1. Managing the department of public defense;

103 2. Ensuring that the department employs the needed technical and public
104 defense expertise to ensure effective delivery of public defense services;

105 3. Preparing an annual budget for the department that evaluates and forecasts
106 service delivery levels and program expenses for contractors, assigned counsel and
107 administration. Such evaluations and forecasts shall include an analysis of the impact, if

108 any, of changes in the procedures or practices of the courts, prosecutor, police, public
109 defense contractors, or other elements of the criminal justice system;

110 4. Representing the department in city, county, state, federal and private forums
111 when the county public defender considers it appropriate to do so;

112 5. Advocating and working for social justice and criminal justice reform related
113 to public defense;

114 6. Ensuring that the department of public defense meets the Washington State
115 Standards for Indigent Defense Services;

116 7. Developing and maintaining appropriate standards and guidelines for the
117 qualification and experience of public defense attorneys and paraprofessionals;

118 8. Implementing, to the extent feasible, the Ten Principles of a Public Defense
119 Delivery System that were approved by the American Bar Association House of
120 Delegates in February of 2002, and reporting on April 1 of each year, in the manner
121 prescribed in section 4.J, on the status of that implementation; and

122 9. Working collaboratively with the public defense advisory board and
123 providing relevant, non-privileged information to the board upon its reasonable request.

124 B. The county public defender shall be appointed by the county executive,
125 subject to confirmation by the county council, from among three candidates nominated
126 by the public defense advisory board.

127 C. The county public defender shall be an attorney admitted to practice law in the
128 courts of the state of Washington and a member of the Washington State Bar Association
129 in “active” status and shall have, at the time of appointment, at least ten years of

130 experience as an attorney primarily practicing criminal defense, including both felonies
131 and misdemeanors, as well as supervisory and managerial experience.

132 D. The term of office of the county public defender is four years, coterminous
133 with the term of the county prosecuting attorney.

134 E. The county executive may reappoint the county public defender to additional
135 four-year terms, subject to confirmation by the county council.

136 F. The county council may remove the county public defender from office for
137 cause, which includes but is not limited to:

138 1. The grounds for vacancy of elective office under Section 680 of the King

139 County Charter;

140 2. Failure to meet the applicable legal requirements for serving as county public
141 defender, as set forth in the county charter or other applicable law;

142 3. Conviction of a crime; and

143 4. A finding or stipulation of misconduct under the Washington Rules of
144 Professional Conduct.

145 G. Confirmation of the appointment and reappointment of the county public
146 defender requires the affirmative votes of at least five members of the county council.

147 Removal requires at least six affirmative votes.

148 H. If the office of county public defender becomes vacant before the end of the
149 term of office, the person appointed as a replacement shall serve the remainder of the
150 term, rather than beginning a new four-year term.

151 I. The county public defender shall receive compensation at the same rate as the
152 prosecuting attorney.

153 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 2.60 a
154 new section to read as follows:

155 A. The public defense advisory board shall: regularly review the activities and
156 plans of the department of public defense, make recommendations to the county public
157 defender on matters concerning the department, prepare reports as required in this section
158 and as deemed appropriate by the board; and when there is a vacancy in the office of
159 county public defender, as provided in subsection K of this section, recommend to the
160 county council three possible candidates to fill the vacancy.

161 B. In performing its duties, the board shall work collaboratively with the county
162 public defender and may reasonably request relevant, non-privileged information from
163 the county public defender.

164 C. The board shall consist of ten members, shall establish its own rules of
165 procedure, subject to the county charter, the county code and other applicable law, and
166 shall choose its own chair.

167 D. The board shall consist of one representative of each of the following:

168 1. The Washington Association of Criminal Defense Lawyers

169 <<http://www.wacdl.org/>>;

170 2. The Washington state Office of Public Defense

171 <<http://www.opd.wa.gov/Default.htm>>;

172 3. The Washington Defender Association <<http://wsba.org/>>;

173 4. The King County Bar Association <<http://www.kcba.org/>>;

174 5. A nonpartisan organization active in King County that focuses on mental
175 health issues, such as the King County mental health advisory board
176 <<http://www.kingcounty.gov/healthservices/MentalHealth/Board.aspx>>;

177 6. A nonpartisan organization active in King County that focuses on substance
178 abuse issues, such as the King County alcoholism and substance abuse administrative
179 board
180 <[http://www.kingcounty.gov/healthservices/SubstanceAbuse/Boards/AdministrativeBoar
181 d.aspx](http://www.kingcounty.gov/healthservices/SubstanceAbuse/Boards/AdministrativeBoard.aspx)>;

182 7. A nonpartisan organization active in King County that focuses on issues
183 concerning military veterans, such as the King County veterans program advisory board
184 <[http://www.kingcounty.gov/socialservices/veterans/AdvisoryBoards/VeteransProgramA
185 dvisoryBoard.aspx](http://www.kingcounty.gov/socialservices/veterans/AdvisoryBoards/VeteransProgramAdvisoryBoard.aspx)>;

186 8. A nonpartisan organization active in King County that focuses on issues
187 related to poverty;

188 9. A nonpartisan organization active in King County that focuses on juvenile
189 justice issues; and

190 10. A minority bar association.

191 E. The county council shall appoint each board member from among one or more
192 individuals nominated by the entity that the member will represent.

193 F. Members of the board shall serve staggered three-year terms and until their
194 successors are nominated and confirmed, except that the members designated in
195 subsection D.1., 2. and 3. of this section shall serve an initial term of one year and the
196 members designated in subsection D.4, 5. and 6. of this section shall serve an initial term

197 of two years. If a member leaves the board midterm, the person appointed as a
198 replacement shall serve the remainder of the term, rather than beginning a new term of
199 three years. The county council may reappoint board members for additional three-year
200 terms and may remove any board member who is unable or unwilling to participate
201 effectively in the work of the board or who engages in misconduct that undermines the
202 member's effectiveness as a board member. Removal of a board member requires the
203 affirmative votes of at least six councilmembers. Members of the board shall not be
204 compensated for the performance of their duties as members of the board, but may be
205 paid subsistence rates and mileage in amounts consistent with county policy.

206 G. The process for filling vacancies on the board is:

207 1. The chair of the council shall notify councilmembers of vacancies on the
208 committee and shall direct council staff to develop a job description and list of
209 qualifications for board members, as well as an application form;

210 2. The open positions shall be advertised at a minimum in the county's
211 newspaper of record;

212 3. The chair of the council shall direct council staff to develop administrative
213 procedures for accepting applications. All applications shall be forwarded to all county
214 councilmembers. Applications shall also be forwarded for review to each public defense
215 advisory board member, and the board and any board member may offer written
216 comments to the law, justice, health and human services committee of the council, or its
217 successor;

218 4. The law, justice, health and human services committee of the council, or its
219 successor, shall review applications and may interview applicants. The committee may

220 recommend to the full council the appointment of members to the public defense
221 advisory board; and

222 5. Appointments shall be made by the full council by motion.

223 H. Each member of the advisory board shall have substantial experience and
224 expertise that are relevant to the work of the department of public defense and shall have
225 an ability and willingness to commit the time necessary to attend meetings and participate
226 effectively as a member of the board. A majority of the members should have substantial
227 experience in providing indigent defense representation. To the extent practicable, the
228 board membership shall reflect the diversity of the clients of the department of public
229 defense. A member may not, while serving on the committee, hold elective public office,
230 be a candidate for elective public office or serve as a prosecuting attorney, a judge or an
231 employee of a prosecuting attorney or court.

232 I. The board shall meet at least once every two months and shall issue a report to
233 the executive and the council at least twice each calendar year: once on the state of
234 county public defense and once on the board's review of the proposed budget for public
235 defense.

236 J. Any reporting to the council under this chapter shall be made in the form of
237 paper and electronic copies of the report filed with the clerk of the council, who shall
238 forward electronic copies to all councilmembers, to the lead staff of the budget and fiscal
239 management committee or its successor and to the lead staff of the law, justice, health
240 and human services committee or its successor.

241 K. Within ninety days after a vacancy occurs, or the board learns of an
242 anticipated vacancy, in the office of county public defender, the public defense advisory

243 board shall provide to the county executive, and contemporaneously to the clerk of the
244 county council, the names of exactly three qualified candidates to fill the vacancy,
245 together with copies of the candidates' biographical and descriptive information and all
246 other written information upon which the board relied in choosing the three candidates.
247 The board shall not rank the candidates, but may summarize the particular strengths of
248 each candidate.

249 SECTION 5. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are
250 each hereby amended to read as follows:

251 Legal defense services through the department of public defense (~~(program)~~) shall
252 be made available to all eligible persons for whom counsel is constitutionally required. In
253 addition, legal defense services through the department of public defense (~~(program)~~)
254 (~~(will)~~) shall be made available, when funds are available therefor, to all eligible persons
255 (~~(when there may be some factual likelihood of such person's)~~) in legal proceedings
256 arising in King County that may result in the persons' loss of liberty by an act of the
257 county or any of its agencies, including criminal proceedings alleging a violation of any
258 law of the ((S))state of Washington or ordinance of King County, juvenile matters,
259 mental illness and similar commitment proceedings, revocations and habeas corpus
260 proceedings (~~(when such arise)~~); and to eligible parents and children in dependency
261 proceedings arising in King County.

262 Legal defense services through the department of public defense (~~(program)~~) may
263 be made available, at his or her expense, to a person charged in King County with a
264 felony of public notoriety when the court finds that the defendant is unable to employ
265 adequate private counsel as a result of such public notoriety. The (~~(administrator of the)~~)

266 department of public defense (~~(program)~~) shall establish a reasonable fee for such legal
267 defense services, subject to the approval of the court.

268 SECTION 6. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
269 each hereby amended to read as follows:

270 A. A defendant requesting counsel at public expense shall pay a processing fee of
271 twenty-five dollars as reimbursement to (~~(King County)~~) the county for the
272 administrative costs and expenses incurred in the processing of the application. The
273 processing fee(~~(s)~~) is payable at the time the request for public counsel is made to the
274 (~~(office)~~) department of public defense. Processing fees are not refundable, even if the
275 defendant is determined to be not eligible for counsel at public expense. A defendant
276 (~~(will)~~) shall not be denied counsel because the defendant cannot pay the processing fee.
277 All processing fee payments received shall be credited to the county current expense
278 fund.

279 B. The department of public defense may enter into agreements to provide
280 indigent defense services to the state of Washington, tribal governments and
281 municipalities in King County on a full cost recovery basis, subject to council approval
282 by ordinance when required by law.

283 SECTION 7. Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060 are
284 each hereby amended to read as follows:

285 To be eligible to receive legal defense services through the department of public
286 defense (~~(program)~~) at no cost, the person must be financially unable to obtain adequate
287 representation without substantial hardship to himself and his family and there must be
288 some factual likelihood that he will be deprived of his liberty. If a person has some

289 resources available which can be used to secure representation but not sufficient
290 resources to pay the entire costs of private legal services without substantial hardship to
291 himself and his family, the department of public defense (~~((program))~~) shall determine how
292 much the person shall pay for the legal defense services provided through the (~~((public
293 defense program))~~) department.

294 NEW SECTION. SECTION 8. There is hereby added to K.C.C. chapter 2.60 a
295 new section to read as follows:

296 The department shall manage cases and assign counsel in a manner that avoids
297 conflicts of interest, including those that could arise from division-wide concurrent
298 representation of more than one client involved in a single matter, such as codefendants
299 or defendant and a witness or suspect in the case or correspondents or represented
300 members of a family in a dependency case or a respondent and an adverse witness in a
301 civil dependency case. If the department is unable to provide in-house representation
302 when a conflict exists, it shall assign counsel from the assigned counsel panel. The
303 department shall develop adopt a policy to determine when a conflict exists and to avoid
304 conflicting representation.

305 SECTION 9. Ordinance 197, Section 1, as amended, and K.C.C. 3.16.010 are
306 each hereby amended as follows:

307 A. In accordance with Sections 890, (~~((and))~~) 898 and 899 of the King County
308 Charter, the King County executive is designated bargaining agent for King County,
309 except as provided in subsections B and C. of this section.

310 B.1. The sheriff is the designated bargaining agent of the county on all
311 department of public safety matters except for compensation and benefits for employees

312 of the department of public safety. The county executive is the designated bargaining
313 agent on compensation and benefits for employees of the department of public safety.

314 2. The sheriff and the executive shall consult and collaborate with each other in
315 advance of collective bargaining negotiations with representatives of the employees of
316 the department of public safety. The sheriff and the executive shall identify respective
317 areas of bargaining authority, the positions to be taken on issues expected to arise during
318 collective bargaining and other matters that have the potential to affect collective
319 bargaining. The sheriff and the executive shall make a good faith effort, including
320 meeting if necessary, to resolve any disagreements between them concerning such
321 matters.

322 3. ~~((H))~~ To the extent that the sheriff and the executive are unable to resolve
323 ~~((any))~~ such disagreements, the sheriff and the executive shall promptly submit to each
324 councilmember a confidential, detailed, joint written report describing the disagreement.

325 4. Neither the executive nor the sheriff may propose or agree to the inclusion of
326 language in any collective bargaining agreement, memorandum of agreement or
327 memorandum of understanding concerning employees of the department of public safety
328 without conferring with each other, except regarding compensation and benefits.

329 C.1. The county public defender is the designated bargaining agent of the county
330 on all department of public defense matters except for compensation and benefits for
331 employees of the department of public defense. The county executive is the designated
332 bargaining agent on compensation and benefits for employees of the department of public
333 defense.

334 2. The county public defender and the executive shall consult and collaborate
335 with each other in advance of collective bargaining negotiations with representatives of
336 the employees of the department of public defense. The county public defender and the
337 executive shall identify respective areas of bargaining authority, the positions to be taken
338 on issues expected to arise during collective bargaining and other matters that have the
339 potential to affect collective bargaining. The county public defender and the executive
340 shall make a good faith effort, including meeting if necessary, to resolve any
341 disagreements between them concerning such matters.

342 3. To the extent that the county public defender and the executive are unable to
343 resolve such disagreements, the county public defender and the executive shall promptly
344 submit to each councilmember a confidential, detailed, jointly written report describing
345 the disagreement.

346 4. Neither the executive nor the county public defender may propose or agree to
347 the inclusion of language in any collective bargaining agreement, memorandum of
348 agreement or memorandum of understanding concerning employees of the department of
349 public defense without conferring with each other.

350 SECTION 10. A. Ordinance 8257, Section 3, as amended, and K.C.C. 2.60.30
351 are each hereby repealed.

352 B. Ordinance 383, Section 4, as amended, and K.C.C. 2.60.040 are each hereby
353 repealed.

354 C. Ordinance 8275, Section 6, and K.C.C. 2.60.070 are each hereby repealed.

355 SECTION 11. This ordinance takes effect only upon certification that the charter
356 amendment that this ordinance implements (Proposed Ordinance 2013-0212) has been
357 approved by the voters.
358

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None

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KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

May 14, 2013

Ordinance

Proposed No. 2013-0237.1

Sponsors Dembowski

1 AN ORDINANCE creating a public defender district and
2 public defense advisory board for King County, amending
3 Ordinance 11955, Section 6, as amended, and K.C.C.
4 2.16.130, Ordinance 8257, Section 2, as amended, and
5 K.C.C. 2.60.020, Ordinance 11955, Section 13, as
6 amended, and K.C.C. 2.16.110 and Ordinance 10167,
7 Section 1, as amended, and K.C.C. 2.60.054, adding new
8 sections to K.C.C. chapter 2.60, adding a new section to
9 K.C.C. Title 4A and repealing Ordinance 14412, Section 3,
10 as amended and K.C.C. 2.60.027, Ordinance 383, Section
11 6, as amended, and K.C.C. 2.60.060 and Ordinance 8257,
12 Section 6, and K.C.C. 2.60.070.

13
14

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None

S1

5-15-13

at Sponsor: Patterson
Proposed No.: 2013-0215

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2013-0215, VERSION**

2 **1**

3 On page 1, beginning on line 13, strike everything through page 15, line 306, and insert:

4 " BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 A. Public defense services are mandated by the United States Constitution, the
7 Washington State Constitution and state law.

8 B. The Sixth Amendment of the United States Constitution and Article I, Section
9 22, of the Washington State Constitution guarantee assistance of counsel to every citizen
10 accused of a matter where loss of liberty is possible.

11 C. Since the 1970s, King County has contracted with private, nonprofit
12 corporations for the provision of most indigent defense services. These private, nonprofit
13 corporations were viewed by the county and the corporations as independent contractors
14 and as a result the employees of the private, nonprofit corporations were not considered
15 county employees and did not receive county benefits nor were they enrolled in the
16 Public Employees' Retirement System.

17 D. In January 2006, a class action lawsuit was filed against King County,
18 alleging that the employees of the private, nonprofit corporations were county employees
19 and that King County had a duty to enroll them in the Public Employees' Retirement
20 System (PERS).

21 E. In February 2009, a Pierce County superior court judge entered an injunction
22 requiring employees of the King County public defense contractors to be enrolled in
23 PERS. Enforcement of that injunction was stayed on appeal.

24 F. In August 2011, the Washington Supreme Court affirmed the trial court's
25 decision in a five to four decision. The county's motion for reconsideration, which was
26 supported by the State of Washington as *amicus curiae* was denied.

27 G. In March 2012, the trial court entered an order requiring King County to
28 enroll the then-current employees of the private, nonprofit corporations in the Public
29 Employees' Retirement System, which the county did.

30 H. On March 18, 2013, the King County council adopted Ordinance 17537
31 approving a proposed settlement agreement that would recognize the current employees
32 of the private, nonprofit corporations as county employees on July 1, 2013. As of the
33 effective date of this ordinance, that settlement is still subject to and awaiting final and
34 nonappealable judicial approval.

35 I. The county intends to maintain the high quality of public defense services that
36 public defense attorneys and staff have delivered and to which King County has long
37 been committed, by promoting independence from political influence, a quality work
38 force, and operational efficiency in the provisions of public defense services.

39 J. The county values the expertise and interest of public defenders and recognizes
40 the contributions they have made to establish a foundation of a public defense service
41 system on which to build a new structure. The county desires to work with the agency
42 directors in a close and collaborative process during the transition to a new management
43 structure that achieves the county's goals for public defense.

44 K. The Raising Our Youth As Leaders (ROYAL) project is a program shown to
45 be effective at reducing recidivism in King County youth. The office of public defense
46 expects to be able to continue the contract with the department of community and human
47 services on at least an interim basis. This will ensure the continuation of this project
48 during the public defense transition.

49 L. In order to maintain the continuity of services that meet its principles, the
50 county needs to ensure that current and future clients have access to public defense
51 services without disruption, as the settlement agreement is implemented.

52 M. The proposed class action settlement calls for the county to recognize the
53 employees who are working for the public defense contractors as of June 30, 2013 as
54 King County employees with full benefits for their positions on July 1, 2013 ("the
55 recognition date"). To meet the recognition date obligation and to provide a structure to
56 administer the public defense program, which shall be an executive department with
57 divisions until such time that the council directs implementation of an alternative
58 structure, enactment of this ordinance as an emergency ordinance is necessary.

59 SECTION 2. Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130 are
60 each hereby amended to read as follows:

61 A. The department of community and human services is responsible to manage
62 and be fiscally accountable for the community services division, mental health, chemical
63 abuse and dependency services division(~~(, the office of public defense)~~) and the
64 developmental disabilities division.

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

66 1. Working in partnership with communities and other funders to develop,
67 support and provide human services which emphasize prevention, early intervention and
68 community education, and which strengthen individuals, families and communities in
69 King County;

70 2. Managing programs which increase family self-sufficiency, enhance youth
71 resiliency, reduce community violence and strengthen communities. The division shall
72 also manage programs which address housing and community development needs, and
73 help implement improvements identified in subarea and neighborhood plans for low and
74 moderate income communities and population. Such programs are to include, but not be
75 limited to, providing employment and training for youth and adults and providing
76 assistance to indigent veterans and their families as authorized by chapters 41.02 and
77 73.08 RCW. This division shall administer the county's federal housing and community
78 development funds and other housing and community development programs;

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

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

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

- 85 1. Managing and operating a system of mental health services for acutely
86 disturbed, seriously disturbed and chronically mentally ill children and adults;
- 87 2. Managing and operating a twenty-four-hour crisis response system, including
88 civil commitment as a last resort;
- 89 3. Providing treatment and rehabilitation service for alcoholism and for other
90 drug addictions under federal and state laws and King County ordinances;
- 91 4. Selecting appropriate agencies for the provision of mental health services
92 developing, implementing and monitoring the provision and outcomes of contracted
93 services;
- 94 5. Being responsible for resource management of a comprehensive mental
95 health system including provision of staff support to appropriate advisory boards, and
96 serving as liaison to federal, state, and other governments and relevant organizations in
97 carrying out planning and allocation processes;
- 98 6. Ensuring the continuing availability of appropriate treatment services for
99 eligible individuals with a single diagnosis of a mental illness or a substance use or
100 dependency disorder; and
- 101 7. Developing and maintaining a continuum of appropriate treatment services
102 for eligible individuals with dual diagnoses of both a mental illness and a substance use
103 or dependency disorder.

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

106 ~~E.~~) The duties of the developmental disabilities division shall include the
107 following:

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

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

113 SECTION 3. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are
114 each hereby amended to read as follows:

115 ~~((There is hereby established within the department of community and human
116 services the office of public defense. A public director of the office of public defense
117 shall be appointed by the county executive and approved by the county council. The
118 county executive shall consult with representatives of the criminal justice system and the
119 broader community during the recruitment and selection of the appointee.))~~ A. The
120 department of public defense is responsible to manage and be fiscally accountable for the
121 provision of public defense services. The department should have four divisions.

122 B. The duties of the department of public defense shall include:

123 1. Providing legal defense services in accordance with K.C.C. 2.60.050 and
124 other provisions of this chapter;

125 2. Providing legal defense services in an efficient manner that ensures effective
126 representation at reasonable cost to the county;

127 3. Investigating and determining eligibility for legal defense services through
128 the department. In addition, the department shall secure reimbursement from eligible

129 persons, including the parents of juveniles receiving legal defense service through the
130 department, when the person can afford to pay some or all of the cost to King County of
131 providing them such legal defense services;

132 4. Establishing and maintaining an assigned counsel panel that includes
133 attorneys acceptable to the department who wish to participate in the defense of persons
134 eligible for services through the department;

135 5. Assigning cases to assigned counsel where conflicts of interest or other
136 special circumstances exist which require use of assigned counsel; and

137 6. Preparing an annual budget for the department that evaluates and forecasts
138 service delivery levels and department expenses for service delivery, contractors,
139 assigned counsel and administration. Such evaluations and forecasts shall include an
140 analysis of the impact, if any, of changes in the procedures or practices of the courts,
141 prosecutor, police, or other elements of the criminal justice system.

142 C. The department may provide its services to the state of Washington, tribal
143 governments and municipalities in King County on a full cost recovery basis and is
144 authorized to negotiate appropriate contractual agreements therefor, subject to council
145 approval by ordinance when required by law.

146 D. The department may provide services related to the Raising Our Youth As
147 Leaders (ROYAL) project and is authorized to enter into appropriate contractual
148 agreements therefor.

149 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 2.60 a
150 new section to read as follows:

151 The department of public defense shall be directed by a director who shall be
152 appointed by the executive and confirmed by the council. The duties of the director shall
153 include:

154 A. Managing the department of public defense;

155 B. Ensuring the department employs the needed technical and public defense
156 expertise to ensure effective delivery of public defense services;

157 C. Representing the executive in all city, county, state and federal forums where
158 the defense perspective is required;

159 D. Ensuring that the American Bar Association Ten Principles for a Public
160 Defense System guide the management of the department and development of
161 department standards for legal defense representation;

162 E. Following the Washington State Standards for Indigent Defense Services;

163 F. Developing and maintaining appropriate standards and guidelines for the
164 qualifications and experience level of public defense attorneys and paraprofessionals; and

165 SECTION 5. A. The council requests the executive to negotiate any agreements
166 related to implementation of the settlement agreement approved in Ordinance 17537 with
167 minimal disruption to client services, including but not limited to agreements related to
168 items in Attachment 1.

169 B. The executive may pay the employees of the department the same rates of pay
170 the employees were earning at the public defender agencies until the executive
171 establishes final pay rates and schedules or, for represented employees, until such time as
172 the council ratifies collective bargaining agreements between the county and the union or
173 unions representing employees in the department.

174 C. If attorneys or staff of the private nonprofit public defender corporations who
175 become county employees on July 1, 2013, are employed by the county in a job
176 classification that has an assigned pay range that has a top step lower than the employees'
177 rate of pay on June 30, 2013, the executive may pay the employees at the higher rate of
178 pay. If the executive decides to allow the higher rate of pay, the employees' wage would
179 be frozen until the top step of the pay range is greater than the employees' frozen rate of
180 pay.

181 NEW SECTION. SECTION 7. There is hereby added to K.C.C. chapter 2.60 a
182 new section to read as follows:

183 The department shall manage cases and assign counsel in a manner that avoids
184 conflicts of interest, including but not limited to those that could arise from division-wide
185 concurrent representation of more than one client involved in a single matter, such as co-
186 defendants or defendant and a witness or suspect in the case or co-respondents or
187 represented members of a family in a dependency case or a respondent and an adverse
188 witness in a civil dependency case. If the department is unable to provide in-house
189 representation when a conflict exists, it shall assign counsel from the assigned counsel
190 panel. The department shall adopt a policy to determine when a conflict exists and to
191 avoid conflicting representation.

192 NEW SECTION. SECTION 8. There is hereby added to K.C.C. Title 4A a new
193 section to read as follows:

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

197 SECTION 9. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are
198 each hereby amended to read as follows:

199 Legal defense services through the ~~((public defense program))~~department shall
200 be made available to all eligible persons for whom counsel is constitutionally required. In
201 addition, legal defense services through the ~~((public defense program~~
202 ~~will))~~department shall be made available when funds are available therefor; to all eligible
203 persons ~~((when there may be some factual likelihood of))~~ in legal proceedings arising in
204 King County that may result in such ~~((person's))~~ persons' loss of liberty by an act of King
205 county or any of its agencies, including but not limited to a violation of any law of the
206 ~~((S))~~state of Washington or ordinance of King County, juvenile matters, mental illness
207 and similar commitment proceedings, revocations and habeas corpus proceedings when
208 such arise in King County.

209 Legal defense services through the ~~((public defense program))~~department may be
210 made available, at his or her expense, to a person charged in King County with a felony
211 of public notoriety when the court finds that the defendant is unable to employ adequate
212 private counsel as a result of such public notoriety. The ~~((administrator))~~director of the
213 ~~((public defense program))~~department shall establish a reasonable fee for such legal
214 defense services, subject to the approval of the court.

215 SECTION 10. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
216 each hereby amended to read as follows:

217 A. A defendant requesting counsel at public expense shall pay a processing fee
218 ~~((of twenty five dollars))~~, as specified in section 8 of this ordinance, as reimbursement to
219 ~~((King))~~ the ~~((C))~~county for the administrative costs and expenses incurred in the

220 processing of the application. The processing fee is payable at the time the request for
221 ~~((public))~~ counsel is made to the ~~((office))~~department of public defense. Processing fees
222 are not refundable, even if the defendant is determined to be not eligible for counsel at
223 public expense. A defendant ~~((will))~~shall not be denied counsel because the defendant
224 cannot pay the processing fee. ~~((All processing fee payments received shall be credited to
225 the county current expense fund.))~~

226 B. To be eligible to receive legal defense services through the public defense
227 program at no cost, the person must be financially unable to obtain adequate
228 representation without substantial hardship to the person and the person's family and
229 there must be some factual likelihood that the person will be deprived of his or her
230 liberty. If a person has some resources available that can be used to secure representation
231 but not sufficient resources to pay the entire costs of private legal services without
232 substantial hardship to the person and the person's family, the department of public
233 defense shall determine how much the person shall pay for the legal defense services
234 provided through the department of public defense.

235 SECTION 11. A. Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027
236 are each hereby repealed.

237 B. Ordinance 8257, Section 3, and K.C.C. 2.60.030 are each hereby repealed.

238 C. Ordinance 383, Section 4, as amended, and K.C.C. 2.60.040 are each hereby
239 repealed.

240 D. Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060 are each hereby
241 repealed.

242 E. Ordinance 8257, Section 6, and K.C.C. 2.60.070 are each hereby repealed.

243 SECTION 12. The county council finds as a fact and declares that an emergency
244 exists and that this ordinance is necessary for the immediate preservation of public peace,
245 health or safety or for the support of county government and its existing public
246 institutions.

247 "

248 **EFFECT:**

- 249 • Technical language clean-up
- 250 • Clarifies pay for represented employees
- 251 • Modifies proposal to make some passages consistent with existing 2.60 code,
252 including removing the addition of dependencies to the list of case types and
253 repealing .030 after incorporating .030 language elsewhere in the striker.
- 254 • Repealing .040 which authorizes contracts with non-profit agencies for public
255 defense.
- 256 • Reverts selection of interim director to normal appointment process instead of
257 making current OPD director the interim director, based on legal review.

258



5/15/13

at Sponsor: Patterson
Proposed No.: 2013-0215

1 **TITLE AMENDMENT TO PROPOSED ORDINANCE 2013-0215, VERSION 1**

2 On page 1, beginning on line 1, strike lines 1 through 12, and insert:

3 " AN ORDINANCE creating a department of public defense
4 within the executive branch; amending Ordinance 11955,
5 Section 6, as amended, and K.C.C. 2.16.130, Ordinance 8257,
6 Section 2, as amended, and K.C.C. 2.60.020, Ordinance 383,
7 Section 5, as amended, and K.C.C. 2.60.050 and Ordinance
8 10167, Section 1, as amended, and K.C.C. 2.60.054, adding
9 new sections to K.C.C. chapter 2.60, adding a new section to
10 K.C.C. Title 4A, repealing Ordinance 14412, Section 3, as
11 amended and K.C.C. 2.60.027, Ordinance 8257, Section 3, and
12 K.C.C. 2.60.030, Ordinance 383, Section 4, as amended, and
13 K.C.C. 2.60.040, Ordinance 383, Section 6, as amended, and
14 K.C.C. 2.60.060 and Ordinance 8257, Section 6, and K.C.C.
15 2.60.070 and declaring an emergency.

16 "

17 **EFFECT: Technical clean-up and synchronizing with striker changes as follows:**

- 18 • Removes 2.16.110 reference which is deleted in striker
- 19 • Removes incorrect 2.60.010 reference
- 20 • To match changes in striker, removes 2.16.110, adds 2.60.050, and repeals
- 21 2.60.030 and .040.
- 22



KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

May 14, 2013

Ordinance

Proposed No. 2013-0215.1

Sponsors Patterson

1 AN ORDINANCE creating a department of public defense
2 within the executive branch; amending Ordinance 11955,
3 Section 6, as amended, and K.C.C. 2.16.130, Ordinance 8257,
4 Section 2, as amended, and K.C.C. 2.60.020, Ordinance 11955,
5 Section 13, as amended, and K.C.C. 2.16.110 and Ordinance
6 10167, Section 1, as amended, and K.C.C. 2.60.054, adding
7 new sections to K.C.C. chapter 2.60, adding a new section to
8 K.C.C. Title 4A, decodifying K.C.C. 2.60.010 and repealing
9 Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027,
10 Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060
11 and Ordinance 8257, Section 6, and K.C.C. 2.60.070 and
12 declaring an emergency.

13 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

14 SECTION 1. Findings:

15 A. Public defense services are mandated by the United States Constitution, the
16 Washington State Constitution and state law.

17 B. The Sixth Amendment of the United States Constitution and Article I, Section
18 22, of the Washington State Constitution guarantee assistance of counsel to every citizen
19 accused of a matter where loss of liberty is possible.

20 C. Since the 1970s, King County has contracted with private, nonprofit
21 corporations for the provision of most indigent defense services. These private, nonprofit
22 corporations were viewed by the county as independent contractors and the employees of
23 the private, nonprofit corporations did not receive county benefits nor were they enrolled
24 in the Public Employees' Retirement System.

25 D. In January 2006, a class action lawsuit was filed against King County,
26 alleging that the employees of the private, nonprofit corporations were county employees
27 and that King County had a duty to enroll them in the Public Employees' Retirement
28 System (PERS).

29 E. In February 2009, a Pierce County superior court judge entered an injunction
30 requiring employees of the King County public defense contractors to be enrolled in
31 PERS. Enforcement of that injunction was stayed on appeal.

32 F. In August 2011, the Washington Supreme Court affirmed the trial court's
33 decision in a five to four decision. The county's motion for reconsideration, which was
34 supported by the State of Washington as *amicus curiae* was denied.

35 G. In March 2012, the trial court entered an order requiring King County to
36 enroll the then-current employees of the private, nonprofit corporations in the Public
37 Employees' Retirement System, which the county did.

38 H. On March 18, 2013, the King County council adopted Ordinance 17537
39 approving a proposed settlement agreement that would recognize the current employees
40 of the private, nonprofit corporations as county employees on July 1, 2013. As of the
41 effective date of this ordinance, that settlement is still subject to and awaiting final and
42 nonappealable judicial approval.

43 I. The county intends to maintain the high quality of public defense services that
44 public defense attorneys and staff have delivered and to which King County has long
45 been committed, by promoting independence from political influence, a quality work
46 force, and operational efficiency in the provisions of public defense services.

47 J. The county values the expertise and interest of public defenders and recognizes
48 the contributions they have made to establish a foundation of a public defense service
49 system on which to build a new structure. The county desires to work with the agency
50 directors in a close and collaborative process during the transition to a new management
51 structure that achieves the county's goals for public defense.

52 K. In order to maintain the continuity of services that meet its principles, the
53 county needs to ensure that current and future clients have access to public defense
54 services without disruption, as the settlement agreement is implemented.

55 L. The proposed class action settlement calls for the county to recognize the
56 employees who are working for the public defense contractors as of June 30, 2013 as
57 King County employees with full benefits for their positions on July 1, 2013 ("the
58 recognition date"). To meet the recognition date obligation and to provide a structure to
59 administer the public defense program, which shall be an executive department with
60 divisions until such time that the council directs implementation of an alternative
61 structure, enactment of this ordinance as an emergency ordinance is necessary.

62 SECTION 2. Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130 are
63 each hereby amended to read as follows:

64 A. The department of community and human services is responsible to manage
65 and be fiscally accountable for the community services division, mental health, chemical

66 abuse and dependency services division(~~(, the office of public defense)~~) and the
67 developmental disabilities division.

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

69 1. Working in partnership with communities and other funders to develop,
70 support and provide human services which emphasize prevention, early intervention and
71 community education, and which strengthen individuals, families and communities in
72 King County;

73 2. Managing programs which increase family self-sufficiency, enhance youth
74 resiliency, reduce community violence and strengthen communities. The division shall
75 also manage programs which address housing and community development needs, and
76 help implement improvements identified in subarea and neighborhood plans for low and
77 moderate income communities and populationn. Such programs are to include, but not
78 be limited to, providing employment and training for youth and adults and providing
79 assistance to indigent veterans and their families as authorized by chapters 41.02 and
80 73.08 RCW. This division shall administer the county's federal housing and community
81 development funds and other housing and community development programs;

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

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

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

- 88 1. Managing and operating a system of mental health services for acutely
89 disturbed, seriously disturbed and chronically mentally ill children and adults;
- 90 2. Managing and operating a twenty-four-hour crisis response system, including
91 civil commitment as a last resort;
- 92 3. Providing treatment and rehabilitation service for alcoholism and for other
93 drug addictions under federal and state laws and King County ordinances;
- 94 4. Selecting appropriate agencies for the provision of mental health services
95 developing, implementing and monitoring the provision and outcomes of contracted
96 services;
- 97 5. Being responsible for resource management of a comprehensive mental
98 health system including provision of staff support to appropriate advisory boards, and
99 serving as liaison to federal, state, and other governments and relevant organizations in
100 carrying out planning and allocation processes;
- 101 6. Ensuring the continuing availability of appropriate treatment services for
102 eligible individuals with a single diagnosis of a mental illness or a substance use or
103 dependency disorder; and
- 104 7. Developing and maintaining a continuum of appropriate treatment services
105 for eligible individuals with dual diagnoses of both a mental illness and a substance use
106 or dependency disorder.
- 107 D. ~~((The duties of the office of public defense shall include those duties specified~~
108 ~~in K.C.C. chapter 2.60.~~
- 109 E.)) The duties of the developmental disabilities division shall include the
110 following:
-

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

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

116 SECTION 3. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are
117 each hereby amended to read as follows:

118 ~~((There is hereby established within the department of community and human
119 services the office of public defense. A public director of the office of public defense
120 shall be appointed by the county executive and approved by the county council. The
121 county executive shall consult with representatives of the criminal justice system and the
122 broader community during the recruitment and selection of the appointee.))~~ A. The
123 department of public defense is responsible to manage and be fiscally accountable for the
124 provision of public defense services. The department should have four divisions.

125 B. The duties of the department of public defense shall include:

126 1. Providing publicly financed legal defense services that are constitutionally
127 required to the indigent and the near indigent person in all matters when there is some
128 factual likelihood that a person may be deprived of the person's liberty under the laws of
129 the state of Washington or King County, including, but not limited to, a violation of any
130 law of the state of Washington or county ordinance, juvenile and dependency matters,
131 mental illness and similar commitment proceedings, revocations in mental health civil
132 committee proceedings and habeas corpus proceedings when they arise in King County;

133 2. Providing legal defense services available in an efficient manner that ensures
134 effective representation at reasonable cost to the county;

135 3. Investigating and determining eligibility for publicly financed legal defense
136 services. Indigent determination is controlled by chapter 10.101 RCW. In addition, the
137 department of public defense shall secure reimbursement from eligible persons, including
138 the parents of juveniles represented by attorneys assigned by the department of public
139 defense, when the person can afford to pay some or all of the cost to King County of
140 providing them such legal defense services;

141 4. Assigning cases to public defense attorneys consistent with the federal and
142 state constitutions and standards; and

143 5. Establishing and maintaining an assigned counsel panel that includes
144 attorneys acceptable to the department who wish to participate in the defense of persons
145 eligible under the public defense program.

146 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 2.60 a
147 new section to read as follows:

148 The department of public defense shall be directed by a director who shall be
149 appointed by the executive and confirmed by the council. The duties of the director shall
150 include:

151 A. Managing the department of public defense;

152 B. Ensuring the department employs the needed technical and public defense
153 expertise to ensure effective delivery of public defense services;

154 C. Representing the executive in all city, county, state and federal forums where
155 the defense perspective is required;

156 D. Ensuring that the American Bar Association Ten Principles for a Public
157 Defense System guide the development, management and department standards for legal
158 defense representation;

159 E. Following the Washington State Bar Association Standards for Indigent
160 Defense Services in establishing caseload limits for attorneys;

161 F. Developing and maintaining appropriate standards and guidelines for the
162 qualification and experience of public defense attorneys and paraprofessionals; and

163 G. Establishing a process for paying for legal services and expenses when a
164 defendant is unable to do so. If the department and the defendant cannot agree on the
165 reasonableness of the request for payment of legal services and expenses, either the
166 department or the defendant may petition the superior court for a determination of
167 reasonableness.

168 SECTION 5. Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110 are
169 each hereby amended to read as follows:

170 A. The county executive shall appoint the county administrative officer and the
171 director of each executive department, except the departments of assessments, public
172 safety, elections and judicial administration. The county executive shall also appoint the
173 division director of the youth detention facility through a competitive search process that
174 includes participation by the superior court judges.

175 B. The county administrative officer shall appoint the division directors and chief
176 officers of each administrative office in the department of executive services.

177 C. The director of each executive department, at the discretion of the county
178 executive, shall appoint exempt employees of his or her department as provided in
179 Section 550 of the King County Charter.

180 D.1. All appointments by the county executive shall be subject to confirmation
181 by a majority of the county council except exempt personnel assigned to his or her
182 personal staff.

183 2. All appointments to positions of division director or chief officer of an
184 administrative office not made by the county executive shall be subject to approval by the
185 county executive.

186 E.1.a All individuals appointed by the county executive, under Section 340.40 of
187 the King County Charter, shall serve in an acting capacity, unless confirmed by the
188 council. The executive is authorized to appoint a person to serve in an acting capacity to
189 fill a position requiring council confirmation for a period of no greater than one hundred
190 fifty days. The executive shall notify the council within ninety days concerning the status
191 of his or her search for qualified candidates for appointment to the vacant position.
192 Thereafter, the individual may continue serving in an acting capacity for successive sixty-
193 day periods only with approval by motion of the county council. The council shall grant
194 at least one successive sixty-day extension if the executive certifies to the council's
195 satisfaction that the executive is actively pursuing a search for qualified candidates for
196 appointment to the vacant position. If no appointment is transmitted to the council for
197 confirmation during the authorized period, the position shall be considered vacant for
198 purposes of exercise of any authority given to the position under ordinance and no salary
199 shall be paid for the position while it is so vacant.

200 b. Within seven calendar days of any executive appointment that is subject to
201 council confirmation, the executive shall deliver written notice of said appointment to the
202 council accompanied by a proposed motion confirming the appointment.

203 c. Upon the receipt of the notification by the executive of an appointment,
204 accompanied by the proposed motion, the council shall act to consider confirmation of
205 the appointment within ninety days. Approval of the introduced motion by a majority of
206 the council shall constitute confirmation of the appointee. Once confirmed, the appointee
207 is no longer serving in an acting capacity.

208 d. In considering the confirmation of executive appointments to offices of
209 management level responsibility, the council shall base its review on the ability of the
210 appointee to meet the following criteria:

211 (1) a demonstrated reputation for integrity and professionalism;

212 (2) a commitment to and knowledge of the responsibilities of the office;

213 (3) a history of demonstrated leadership, experience and administrative
214 ability;

215 (4) the ability to work effectively with the executive, the council, other
216 management, public agencies, private organizations and citizens; and

217 (5) a demonstrated sensitivity to and knowledge of the particular needs and
218 problems of minorities and women.

219 e. The appointee, before review of the appointment by the council, shall submit
220 to the chair of the council:

221 (1) a full and complete resume of his or her employment history, to include
222 references attesting to the stated employment experiences; and

223 (2) a signed statement acknowledging that the council's confirmation process
224 may require the submittal of additional information relating to the background and
225 expertise of the appointee.

226 f. Upon receipt of an executive appointment, the chair or his or her delegate,
227 subject to the council's rules of procedure, shall notify council members of the
228 appointment and attempt to allow a minimum of one work week for individual members
229 to submit written questions to the reviewing committee.

230 2. It is understood that written inquiries submitted to the reviewing committee,
231 by individual council members, may require a written response from the appointee or the
232 executive, in matters pertaining to the process of appointment and other pertinent
233 employment policies of King County.

234 F. Subsection E. of this section does not apply to the appointment and
235 confirmation of the interim director of the department of public defense created in this
236 ordinance.

237 SECTION 6. A. The current director of the office of public defense shall be the
238 interim director of the department. The interim director may apply for the position of
239 director of the department of public defense.

240 B. The council requests the executive to negotiate any agreements necessary to
241 ensure implementation of the settlement agreement approved in Ordinance 17537 with
242 minimal disruption to client services, including but not limited to agreements related to
243 items in Attachment 1.

244 C. The executive may continue to pay the employees of the department the same
245 rates of pay the employees were earning at the public defender agencies until the
246 executive establishes pay rates and schedules.

247 D. If attorneys or staff of the private nonprofit public defender corporations who
248 become county employees on July 1, 2013, are employed by the county in a job
249 classification that has an assigned pay range that has a top step lower than the employees'
250 rate of pay on June 30, 2013, the executive may continue to pay the employees at the
251 higher rate of pay. If the executive decides to allow the higher rate of pay, the employees'
252 wage would be frozen until the top step of the pay range is greater than the employees'
253 frozen rate of pay.

254 NEW SECTION. SECTION 7. There is hereby added to K.C.C. chapter 2.60 a
255 new section to read as follows:

256 The department shall manage cases and assign counsel to avoid conflicts of
257 interest, including but not limited to those that could arise from division-wide concurrent
258 representation of more than one client involved in a single matter, such as co-defendants
259 or defendant and a witness or suspect in the case or co-respondents or represented
260 members of a family in a dependency case or a respondent and an adverse witness in a
261 civil dependency case. If the department is unable to provide in-house representation
262 when a conflict exists, it shall assign counsel from the assigned counsel panel. The
263 department shall develop a policy to determine when a conflict exists and to avoid
264 conflicting representation. If the department is unable to provide representation when a
265 conflict exists, it shall assign counsel from the assigned counsel panel. The department

266 shall develop a policy to determine when a conflict exists and to avoid conflicting
267 representation.

268 NEW SECTION. SECTION 8. There is hereby added to K.C.C. Title 4A a new
269 section to read as follows:

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

273 SECTION 9. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
274 each hereby amended to read as follows:

275 A. A defendant requesting counsel at public expense shall pay a processing fee
276 ~~((of twenty-five dollars)), as specified in section 9 of this ordinance,~~ as reimbursement to
277 ~~((King)) the ((€))~~county for the administrative costs and expenses incurred in the
278 processing of the application. The processing fee is payable at the time the request for
279 ~~((public))~~ counsel is made to the ~~((office-))~~ department of public defense. Processing fees
280 are not refundable, even if the defendant is determined to be not eligible for counsel at
281 public expense. A defendant ~~((will))~~ shall not be denied counsel because the defendant
282 cannot pay the processing fee. ~~((All processing fee payments received shall be credited to
283 the county current expense fund.))~~

284 B. To be eligible to receive legal defense services through the public defense
285 program at no cost, the person must be financially unable to obtain adequate
286 representation without substantial hardship to the person and the person's family and
287 there must be some factual likelihood that the person will be deprived of his or her
288 liberty. If a person has some resources available that can be used to secure representation

289 but not sufficient resources to pay the entire costs of private legal services without
290 substantial hardship to the person and the person's family, the department of public
291 defense shall determine how much the person shall pay for the legal defense services
292 provided through the department of public defense.

293 C. The department of public defense may enter into agreements to provide
294 services to the state of Washington, tribal governments and municipalities in King
295 County on a full cost recovery basis, subject to council approval by ordinance when
296 required by law.

297 SECTION 10. A. Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027
298 are each hereby repealed.

299 B. Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060 are each hereby
300 repealed.

301 C. Ordinance 8257, Section 6, and K.C.C. 2.60.070 are each hereby repealed.

302 SECTION 11. The county council finds as a fact and declares that an emergency

303 exists and that this ordinance is necessary for the immediate preservation of public peace,
304 health or safety or for the support of county government and its existing public
305 institutions.

306

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. Transition Items

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S1

5-15-13

at Sponsor: Patterson
Proposed No.: 2013-0216

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2013-0216, VERSION**

2 **1**

3 On page 1, beginning on line 7, strike everything through page 4, line 70, and insert:

4 " BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

5 **SECTION 1. Findings:**

6 For the reasons set forth in proposed ordinance 2013-0215, enactment of an
7 interim structure for administration of the public defense program as an emergency
8 ordinance is necessary to meet the timelines associated with the proposed settlement
9 agreement authorized by Ordinance 17537. This appropriation ordinance also must be
10 enacted as an emergency ordinance to ensure that funds are available to effectuate the
11 interim structure in a timely manner.

12 **SECTION 2.** From the general fund there is hereby appropriated a net total of
13 \$2,275,000 from various general fund agencies.

14 From various non-general funds there is hereby appropriated a net total of
15 \$1,779,000 from various non-general fund agencies, amending the 2013/2014 Biennial
16 Budget Ordinance, Ordinance 17476.

39 Of this appropriation, (~~(\$20,000,000)~~) \$16,000,000 shall be expended or
 40 encumbered only for public defense services in the first half of 2013 provided by the
 41 private, nonprofit corporations with which the county presently contracts, supplemented
 42 by assigned counsel, currently on a contract cycle of July 1 through June 30. Should the
 43 executive wish to reorganize or restructure the delivery of public defense services, a
 44 proposal and rationale for restructuring, with background information, must be presented
 45 to the council with sufficient time in advance of the proposed effective date for the new
 46 structure for the council to review and approve or reject the proposal after study and a
 47 public hearing.

48 Prior to submitting a proposal to reorganize or restructure the delivery of public
 49 defense services, the council requests the executive to consult with interested parties,
 50 including the current private, nonprofit corporations providing public defense services,
 51 labor unions representing employees of those private, nonprofit corporations, bar leaders,
 52 and other governments currently served by the same private, nonprofit corporations that
 53 provide service to the county.

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

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

59	Fund	Fund Name	2013
60	3771	KCIT CAPITAL PROJECTS	\$1,529,000
61	3951	BUILDING REPAIR AND REPLACEMENT	\$250,000

ATTACHMENT A GENERAL GOVERNMENT CAPITAL IMPROVEMENT PROGRAM, Revised 5/15/13

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

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5/15/13

at Sponsor: Patterson
Proposed No.: 2013-0216

1 **TITLE AMENDMENT TO PROPOSED ORDINANCE 2013-0216, VERSION 1**

2 On page 1, beginning on line 1, strike lines 1 through 6, and insert:

3 " AN ORDINANCE making a net supplemental
4 appropriation of \$2,275,000 to various general fund
5 agencies and \$1,779,000 to various non-general fund
6 agencies and amending the 2013/2014 Biennial Budget
7 Ordinance, Ordinance 17476, Sections 43, 49 and 63, as
8 amended, and Attachment B, as amended and declaring an
9 emergency."

10 **EFFECT: Declares an emergency to match amendment.**

11

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KING COUNTY
Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

May 14, 2013

Ordinance

Proposed No. 2013-0216.1

Sponsors Patterson

1 AN ORDINANCE making a net supplemental
2 appropriation of \$2,275,000 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 and 63, as
6 amended, and Attachment B, as amended.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. From the general fund there is hereby appropriated a net total of
9 \$2,275,000 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 ((Office)) Department of public defense \$41,481,187

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

23 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 ((office)) 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
37 private, nonprofit corporations with which the county presently contracts, supplemented
38 by 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 private, nonprofit corporations providing public defense services,
47 labor unions representing employees of those private, nonprofit corporations, bar leaders,
48 and other governments currently served by the same private, nonprofit corporations that
49 provide service to the county.

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

52 DEPARTMENT OF PUBLIC DEFENSE - From the general fund there is hereby
53 appropriated to:

54	Department of public defense	\$490,000
55	The maximum number of additional FTEs for department of public defense	
56	shall be:	355.00

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

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

63	Fund	Fund Name	2013
64	3771	KCIT CAPITAL PROJECTS	\$1,529,000

65 3951 BUILDING REPAIR AND REPLACEMENT \$250,000

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

67 SECTION 6. Sections 3 and 4 of this ordinance take effect on the effective date
68 of the ordinance creating the department of public defense. (Proposed Ordinance 2013-
69 0215).

70

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, ____.

Dow Constantine, County Executive

Attachments: A. General Government Capital Improvement Program

ATTACHMENT A GENERAL GOVERNMENT CAPITAL IMPROVEMENT PROGRAM

Fund Title	Project	Project Name	2013	2014	2015	2016	2017	2018	Grand Total
3771/KCIT Capital Projects									
	1120359	KCIT/OPD	750,000						750,000
	1120358	KCIT/OPD	749,000						749,000
3771/KCIT Capital Projects			1,499,000						1,499,000
3951/Building Repair and Replacement									
	1120507	DES FMD OPD Transition	150,000						150,000
	1120508	DES FMD OPD Planning	100,000						100,000
3951/Building Repair and Replacement			250,000						250,000
Grand Total			1,749,000						1,749,000

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April 25, 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 two ordinances related to the reorganization of the Office of Public Defense: an ordinance with proposed King County Code revisions and a supplemental budget ordinance. This transmittal is in response to King County Council Motion 13886, relating to the timeline for reorganizing public defense services for King County. That motion addressed Council-adopted Ordinance 17537, which approved a proposed settlement agreement in the *Dolan v. King County* class action lawsuit calling for the recognition of the current employees of the public defense nonprofit corporations as County employees on July 1, 2013.

Motion 13886 requests that:

“...the executive 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 delivery of public defense services.”

The ordinance revising King County Code provides the following:

- The creation of a Department of Public Defense with four divisions;
- A definition of the responsibilities and duties of the department, which includes the authority for the County to provide public defense services directly, rather than via contract;
- Independence and authority to hire at department level classifications the staff needed to provide services within a new public defense department and its divisions;
- The terms for creating an interim director to manage the transition; and
- The authority to enter into agreements to provide services to the state of Washington, tribal governments and municipalities in King County on a full cost recovery basis.

The Honorable Larry Gossett

April 25, 2013

Page 2

The supplemental budget ordinance provides full time equivalent (FTE) authority to hire all 355 of the people currently employed at the private, nonprofit corporations. This includes private, nonprofit corporation staff working on contracts or projects not related to King County work (e.g., tribal courts, Seattle Municipal Court and Sexually Violent Predator contracts). Transition planning assumes that these employees will, in large part, maintain their current operational work structure and locations. In addition, the supplemental provides funding needed for logistical work associated with the transition, including work by the Human Resources Division, Facilities Management Division, and King County Information Technology, as well as the existing Office of Public Defense.

I have directed the Office of Public Defense Director to continue to work with the private, nonprofit corporations' management to establish the agreements required for continuation of public defense services, including the resolution of prepayment of open cases; space planning for public defense staff; furniture, equipment, and office supplies for public defense staff; contract reconciliation for case services; attorney and staff communication protocols and resources; and provision of continuing management and administrative services provided by corporate upper management. We will continue to work with Council staff, the private, nonprofit corporations' management and staff, and other stakeholders to address concerns as they arise, and to plan a thoughtful transition to the interim organizational structure.

The ordinances enclosed 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 King County employees. With the Washington Supreme Court's decision and the proposed settlement agreement, we have a new reality that requires a different model for public defense for both the employees and for County government. I know the Council shares my commitment to uphold a high-quality, cost-effective and independent public defense system and to ensuring a continuity of service to indigent defendants during the transition to the new reality. Thank you for your consideration of this important legislation.

The Honorable Larry Gossett

April 25, 2013

Page 3

If you have any questions, please feel free to contact David Chapman, Office of Public Defense Director, 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
The Honorable Dan Satterberg, King County Prosecuting Attorney
The Honorable Richard McDermott, Presiding Judge, King County Superior Court
The Honorable Corinna Harn, Presiding Judge, King County District Court
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

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Facilities Management Division

FISCAL NOTE (REVISED)

Attachment 15

Ordinance/Motion No. 2013-0215 and 0216
 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 Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
Building Repair & Replacement	3951	GF Transfer	250,000			
TOTAL						

Expenditures from:

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

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
DES FMD OPD Planning/1120508	100,000	0	0	0
DES FMD OPD Transition/1120507	150,000	0	0	0
		0	0	0
TOTAL	250,000			

Footnotes:

Currently, the private, nonprofit corporations have offices throughout King County. When the individuals in those private, nonprofit corporations become County employees on July 1, 2013, it is anticipated that they will remain in their current work locations. In the long-term, depending on the outcome of Council decisions, the various offices in downtown Seattle may 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 upgrades for ADA compliance or security, 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

Ordinance/Motion No. 00-
 Title: KCIT-OPD Case Management Project
 Affected Agency and/or Agencies: King County Information Technology, 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 Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD	3771	GF Transfer	749,000			
TOTAL			749,000			

Expenditures from:

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

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
56990 CIP Expenditures	749,000			
TOTAL	749,000			

Notes

Currently, each of the four private, nonprofit corporations operates its own case management system. When the employees of the private, nonprofit corporations become County employees 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

FISCAL NOTE

Ordinance/Motion No. 00-
 Title: KCIT-OPD Network Improvements
 Affected Agency and/or Agencies: King County Information Technology, 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 Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD	3771	GF Transfer	780,000			
TOTAL						

Expenditures from:

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

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
56990 CIP Expenditures	780,000			
TOTAL				

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, upgraded to County security standards, and additional servers and network support may be needed. Because the County has limited knowledge of the existing computer inventory, this request assumes that one-third 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.

FISCAL NOTE

Ordinance/Motion No. 00-
 Title: OPD Transition Supplemental Budget
 Affected Agency and/or Agencies: Office of Public Defense, King County Information Technology, Facilities Management Division
 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: 2,275,000

Revenue to:

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

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
General Fund - Public Defense	000000010	A95000	496,000	0	0	0
General Fund - GF Transfers	000000010	A69500	1,779,000			
TOTAL			2,275,000			

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
¹ Personnel for on boarding	368,000	0	0	0
² Supplies for additional staff	45,000	0	0	0
³ 20% Contingency	83,000	0	0	0
⁴ GF Transfer to KCIT	1,529,000	0	0	0
⁵ GF Transfer to FMD	250,000	0	0	0
TOTAL	2,275,000			

Footnotes:

- ¹ In preparation for individuals at the private, nonprofit corporations becoming County employees on July 1, 2013, dedicated resources from HRD, including staff and consultants, will be needed. Additionally, OPD will hire some support positions before July 1 to prepare for the transition.
- ² Supplies budget is estimated costs of startup supplies, such as business cards, nameplates, miscellaneous office supplies, and ORCA cards.
- ³ 20% contingency is calculated on the above two items.
- ⁴ Transfer to King County Information & Technology (KC IT) is for a single case management system and for costs associated with immediate needs, such as replacing out of date computers, security and network upgrades, and configuring computers for the County system.
- ⁵ Transfer to Facilities Management Division of \$100,000 for long-term relocation planning for the downtown Seattle offices and \$150,000 for potential tenant improvements at existing lease locations. Tenant improvement funds will not be spent without PSB approval.