



King County

Committee of the Whole

STAFF REPORT

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|----------------------|--|--------------|---|
| Agenda Item: | 5-6 | Name: | Patrick Hamacher, Amy Tsai, Nick Wagner |
| Proposed No.: | 2013-0212, 2013-0242 | Date: | June 27, 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 the structure of public defense, including a charter amendment for the selection of the chief Public Defender by the Executive (2013-0212) and implementing ordinance for the charter amendment (2013-0242).

SUMMARY

As a result of the Dolan lawsuit, the county is re-examining its structure for county public defense services. On May 20, the Council adopted an in-house structure for public defense and supplemental appropriation as an interim solution until such time as it adopts a final structure for public defense (Ordinance 17588 and 17589). Ordinance 17588 also directed creation of a Public Defense Criminal Justice Reform Advisory Task Force.

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, and contains many of the individual policy choices that would be necessary to implement this approach.

This staff report describes the proposed charter amendment and a proposed striking amendment to the charter amendment. The implementing ordinance that has been previously summarized is recapped.¹ Finally, timelines for action are discussed.

BACKGROUND

Dolan Lawsuit

¹ A revised striking amendment will be distributed at the COW meeting for the implementing ordinance.

For 40 years, King County contracted with 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. 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.

"Interim" Department of Public Defense (Ordinance 17588 and 17589)

On May 20, the Council adopted Ordinance 17588, creating a new department of public defense that initially should have four divisions. This department will be in place until such time as the Council decides on a new public defense structure and that structure is implemented. The Executive is in the process of transitioning staff of the four nonprofit public defense agencies to in-house county employees. Up to 355 staff will be brought onto the county payroll system as of July 1, 2013. As part of that ordinance, the Council created a Public Defense Criminal Justice Reform Advisory Task Force to examine outsourcing options for promoting public defense innovation by August 30. The Council also approved a supplemental appropriation request to fund the transition.

Committee Briefings

The interim ordinance and the proposals that are before the Committee today are the product of months of briefings and stakeholder input. Today's briefing is the eighth Committee of the Whole briefing on this topic in three months. Public Defense has been on the COW agenda eight of eleven meetings this year, or about three-quarters of the meetings. It was the most heard agenda item this year by far.

Throughout the year, the public, both locally and nationally, has weighed in via letters, editorials, meetings and conversations with Councilmembers and staff, and public testimony, including at a public hearing held on May 15 on the interim ordinance and one held for today's COW meeting.

Timelines for additional public input are discussed in the timeline section below.

ANALYSIS

Exec Appointment Charter Amendment (PO 2013-0212)

There is a proposed charter amendment, PO 2013-0212, that would create a Department of Public Defense with the chief defender appointed by the Executive from names recommended by an advisory board, subject to confirmation by the Council. An implementing ordinance (PO 2013-0242) provides additional details on the charter requirements.

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

- Creates a career service² Department of Public Defense
- Department reviewed and advised by a public defense advisory board
- Creates a county Public Defender with measures for increased independence including:
 - Selection by Executive from names submitted by an advisory board, subject to Council confirmation
 - Appointed for a term of years with for-cause termination

A proposed striking amendment (S2) would make the following notable revisions:

1. Additional independence language is added that prohibits elected officials from interfering in the constitutional or ethical duties of the defender.
2. Advisory board duties are expanded to include advising the Executive and Council on matters of social justice related to public defense.
3. The Executive is the removing authority for the Public Defender, but removal is appealable to the Council which makes a final decision by majority vote.
4. The Executive is required to consult with the Public Defender before and during bargaining, but the Executive remains the sole bargaining agent for the county on public defense.
5. Details of how Public Defender candidates are submitted by the advisory board are left to the implementing ordinance.
6. Qualifications for the Public Defender are also left to the implementing ordinance
7. Language is added to ensure that career service provisions of the charter do not prevent the county from contracting for public defense-related services.

The proposed striker changes have had legal review and are discussed below.

As has been noted in previous staff reports, independence of public defense is the first of the ABA Ten Principles for a Public Defense System. The ABA principle of independence for public defense is that "the structure of the system should provide a degree of independence from external influence in its operations." This principle of independence includes the ability to be free from political influence in individual case handling and client representation. It also includes the ability of the chief defender to effectively lobby for funding. In order to achieve these two aspects of independence, a chief defender must be sufficiently insulated from political influences so that he or she

² Note that although the proposed striker S2 removes career service language, it is a technical removal, as county employees by default are career service unless exempted in the charter. Career service is defined in K.C.C. 3.12. The general tenets include merit-based hiring and promotion and for-cause termination with ability to appeal to the Personnel Board.

feels free to act in the best interest of public defense for indigent clients, without fear of inappropriate reprisal or being unduly swayed by conflicting incentives.

A pervasive theme in the staff analysis to date has been the tension between two important public policies: ensuring independence and adequate oversight. The charter amendment seeks to create a balance by creating an Executive department but with added protections to enable the Public Defender to engage in charged duties with professional independence.

1. Independence Language – *"No elected official shall interfere with the administration of the constitutional or ethical duties of the county public defender or issue orders to any officer, agent or employee of the department of public defense regarding those duties."*

The added sentence of non-interference further strengthens the Public Defender's position to be able to independently make professional decisions to fulfill the Public Defender's constitutional and ethical obligations to clients.

2. Advisory Board Duties – *"The board shall also advise the executive and council on matters of social justice related to public defense."*

An aspect of King County's public defense system has been its historical reputation for advocacy on issues of social justice for indigent clients. The public defense advisory board draws upon expertise in the public defense community to advise and report on the department. Its existence creates a separate mechanism of accountability and transparency, which should further the ability of the department to act more independently from the potential pressure of political officials. By adding a social justice component to the board's duties, the proposed striker recognizes the role that the board can play in being an outside perspective for social justice on public defense matters.

3. Executive Removal – *"The county public defender shall be appointed...to a term that ends at the same time as the term of the county prosecuting attorney, unless removed earlier by the executive for cause..... The removal may be appealed by the defender to the council by a process to be prescribed by ordinance."*

The original proposed charter amendment had removal of the county Public Defender by the Council by a supermajority vote. The change to an Executive removal process that is subject to an appeal which is decided by a Council majority vote puts the department more directly under the purview of the Executive. As the department is an Executive department with performance management handled by the Executive branch, it is reasonable for disciplinary actions including removal to originate in the Executive branch. The ability to appeal to the Council preserves an element of independence that is greater than the at-will employment that is the case for all other non-elected Executive department heads.

4. Executive Bargaining – *"The county executive shall consult with the county public defender on the plans and goals for bargaining before and periodically during the negotiation of terms and conditions of employment with employees of the*

department of public defense. The council may prescribe the method of consultation by ordinance."

The original proposed charter amendment assigned negotiation of wages and benefits conditions to the Executive, and negotiation of working conditions to the Public Defender. The proposal was modeled after the Sheriff's Office, which is the only charter-based exception to the general rule that the Executive is the sole bargaining agent for the county (the Prosecutor has bargaining authority as well but that is not set by the charter). The proposed striker returns to having the Executive as the sole bargaining agent, but adds a requirement that the Executive consult with the Public Defender before and during the bargaining process.

The proposed change is consistent with standard bargaining practice for Executive departments, but makes it mandatory by requiring it in the charter. Although the Executive typically consults with department directors during the bargaining process, the proposed striker adds assurance that this will occur by making it a requirement. It also permits the Council to add further details on the method of consultation by ordinance.

Various procedural protections exist in this process to preserve the independence of the Public Defender even with the Executive as the bargaining agent. Attorney casework must follow the state Rules of Professional Conduct and state guidelines such as for caseloads. In the event of a disagreement between the Executive and the Public Defender, the Public Defender could approach the Council which approves all departmental collective bargaining agreements; the Public Defender's non-at-will position has been structured to allow the Public Defender greater freedom to do so than would be true for other department directors. The Council also has the ability to adopt labor policies³ to guide negotiations.

5. Advisory Board recommendation details – *"The county executive shall appoint the county public defender from candidates recommended by the public defense advisory board under a process prescribed by ordinance."*

The original proposed charter amendment specified that the board would recommend three candidates. Leaving such details to the implementing ordinance gives the process the flexibility to be modified over time, while still preserving the core effect of having the Executive's choices limited by advisory board recommendations.

6. Defender Qualification details – *"Qualifications of the county public defender may be established by ordinance."*

The original proposed charter amendment specified that the Public Defender must be

³ See K.C.C. 3.16.015, defining labor policies as "general principles which work to implement the intent of this [labor and employee relations] chapter and guide negotiations for wages, benefits, working conditions and other terms of employment."

admitted to practice law in Washington State and have ten years of criminal defense experience. Leaving such details to the implementing ordinance allows the qualifications to be modified over time as needed and appears reasonable.

7. Contracting for services – *"Nothing in this Article 5 shall limit the ability of the county to contract with any person, organization, or government for services that could be provided by the department of public defense."*

The "interim" ordinance that established the Department of Public Defense (Ordinance 17588) authorized the department to contract for outside services when the director deems it appropriate. The proposed striker ensures that the career service requirements of the charter do not limit that authority.

If the charter amendment were to fail at the ballot, the terms of the "interim" ordinance are in effect unless the Council adopts an ordinance amending the "interim" legislation.

Proposed Ordinance 2013-0212, with the proposed striking amendment, has had legal review and is ready for action.

Implementing Ordinance to Charter Amendment (PO 2013-0242)

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 (as reported in previous staff reports):

- Sets duties of the Public Defender
- Sets qualifications of the Public Defender
- Defines examples of what constitutes removal "for cause"
- Sets compensation for the Public Defender at the same level as the Prosecutor.
- Sets duties of the Public Defense Advisory Board
- Sets membership and selection process of the Public Defense Advisory Board.
- Sets qualifications of the Public Defense Advisory Board.

There is a proposed striking amendment, S2, that will be available at the June 27 COW meeting.

Timelines

In order to place a charter amendment on the November general election ballot, the Council must submit a request for a special election to the county Elections Director by August 6, 2013, the date of the primary (RCW 29A.04.330). Charter amendment ordinances have an effective date ten days after enactment by the Council. As presented in the June 5 staff report, July 10 is the last opportunity for a Wednesday COW meeting to vote a proposal out of committee that would provide the maximum amount of time for a non-emergency ordinance, including time for a one-week courtesy delay at Council.

There is no required timeline for passage of the implementing ordinance. Passage before the November election would inform the public about how the details of the charter amendment would be implemented. Such an ordinance would need to be passed with an effective date that is contingent on passage of the charter amendment.

As mentioned above, a new proposed striking amendment to the implementing ordinance, S2, is being made available at the June 27 COW meeting. Staff will continue to refine the contents of the implementing ordinance with Council direction.

Staff have been directed to create an e-mail address for a 60-day public comment period on the implementing ordinance. The public will be able to visit a web page to view the draft implementing ordinance at:

www.kingcounty.gov/council/issues/publicdefense

The public will be able to email their comments on the implementing ordinance for 60 days to the following email address:

PDcomments@kingcounty.gov

ATTACHMENTS

1. Striking Amendment (S2) to PO 2013-0212
2. Title Amendment (T2) to PO 2013-0212
3. Proposed Ordinance 2013-0212 (Charter Amendment)
4. Striking Amendment (S1) to PO 2013-0242, as presented May 15
5. Proposed Ordinance 2013-0242 (Implementing Ordinance)

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nw, at

Proposed No.: 2013-0212

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SECTION 1. There shall be submitted to the qualified voters of King County for

and new Section 899 to the King County Charter, as set forth below:

the residents of the county.

Section 350.20.60. Department of Public Defense.

The duties of the department of public defense shall include providing legal counsel and representation to indigent individuals in legal proceedings, including those in the superior and district courts for King County and in appeals from those courts, to the extent required under the sixth amendment to the United States Constitution or Article I, Section 22, of the Constitution of the State of Washington. Additional duties may be prescribed by ordinance. The department shall utilize the services of the administrative offices and the executive departments, but it shall not be abolished or have its duties, as established in this section, decreased by the county council or the county executive.

The department of public defense shall be administered by the county public defender, who shall perform the indigent public defense duties specified by general law, including the federal and state constitutions, and additional duties as may be prescribed by ordinance. Elected officials shall not interfere with the administration of the constitutional or ethical duties of the county public defender or issue orders to any officer, agent or employee of the department of public defense regarding those duties.

The county public defender shall be appointed by the county executive, subject to confirmation by the county council, to a term that ends at the same time as the term of the county prosecuting attorney, unless removed earlier by the executive for cause, including the grounds for vacancy for elective office under Section 680 of this charter and such other grounds as the council may prescribe by ordinance. The removal may be appealed by the defender to the council by a process to be prescribed by ordinance. The council's determination shall be final.

40 The county executive shall appoint the county public defender from candidates
41 recommended by the public defense advisory board under a process prescribed by
42 ordinance. Qualifications of the county public defender may be established by ordinance.
43 The county executive may reappoint the county public defender to additional terms,
44 subject to confirmation by the county council. Confirmation of the appointment or
45 reappointment, or removal when appealed, shall require the affirmative votes of at least
46 five members of the county council.

47 **Section 350.20.65. Public Defense Advisory Board.**

48 The public defense advisory board is established to review, advise and report on
49 the department of public defense in a manner that may be prescribed by ordinance. The
50 board shall also advise the executive and council on matters of social justice related to
51 public defense. In the event of a vacancy in the office of county public defender, the
52 board shall recommend candidates from whom the county executive shall make an
53 appointment to fill the vacancy subject to confirmation by the county council. The
54 county council shall prescribe by ordinance the board's membership, process and
55 qualifications for appointment to the board, rules and procedures, and may prescribe by
56 ordinance additional duties of the board.

57 **Section 555. Department of Public Defense.**

58 Nothing in this Article 5 shall limit the ability of the county to contract with any
59 person, organization, or government for services that could be provided by the
60 department of public defense.

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

The county executive shall consult with the county public defender on the plans and goals for bargaining before and periodically during the negotiation of terms and conditions of employment with employees of the department of public defense. The council may prescribe the method of consultation by ordinance.

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

Shall the King County Charter be amended to create an appointed office of county public defender, a department of public defense, and a public defense advisory board, permit the county to contract for public defense services, and require the executive to consult with the county public defender on the executive's bargaining with employees of the department of public defense?"

EFFECT:

1. An unnecessary (redundant) reference to career service is removed.
2. Adds language that elected officials shall not interfere with the administration of the constitutional or ethical duties of the county public defender or issue orders to any officer, agent or employee of the department of public defense regarding those duties.
3. Public Defense Advisory Committee is renamed Public Defense Advisory Board.
4. The details of the board's recommendations for Defender candidates to the Executive are left to be specified by ordinance, but the fact that the Executive must pick from board recommendations remains in the charter amendment.

- 85 5. Qualifications of the Defender are removed and may be established by ordinance.
- 86 6. Board's oversight role is reframed as reviewing, advising and reporting.
- 87 7. Board's duties are expanded to include advising the Executive and Council on
- 88 social justice related to public defense.
- 89 8. Removal of Defender is changed from 6 votes of Council to Executive removal,
- 90 but subject to appeal to the Council by the Defender; the Council's decision shall
- 91 be final and require 5 votes.
- 92 9. Adds that personnel requirements in the charter (including career service) shall
- 93 not prevent the department from contracting out for services.
- 94 10. Instead of bifurcated bargaining, the Executive remains the sole bargaining agent
- 95 for public defense but must consult with the Defender periodically throughout the
- 96 bargaining process.

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6-27-13

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| nw, at | Sponsor: <u>Patterson, Lambert</u> Proposed No.: <u>2013-0212</u> |
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1 **TITLE AMENDMENT TO PROPOSED ORDINANCE 2013-0212, VERSION 1**

2 On page 1, beginning on line 1, strike everything through page 1, line 19, 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"; amending Section 350.20 of the King County
 8 Charter; adding a new Section 350.20.65 to the King
 9 County Charter, creating a public defense advisory board;
 10 adding a new Section 555 to the King County Charter,
 11 permitting the county to contract for public defense
 12 services; adding a new Section 899 to the King County
 13 Charter, requiring the executive to consult with the county
 14 public defender on the executive's bargaining with
 15 employees of the department of public defense; submitting
 16 the same to the voters of the county for their ratification or
 17 rejection at the November 2013 general election."

18 **EFFECT: Amends the title to reflect Striking Amendment S2.**

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

June 25, 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.

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

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

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

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

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

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

4. Assigning cases to public defense attorneys consistent with the federal and 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Conviction of a crime; and

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

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

Removal requires at least six affirmative votes.

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

I. The county public defender shall receive compensation at the same rate as the 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

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

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

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

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

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

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

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

H. Each member of the advisory board shall have substantial experience and 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.

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

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

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

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

SECTION 6. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are 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

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

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

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

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

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

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

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

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

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

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

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

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

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

"

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.**

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

June 25, 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

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

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

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

- ~~A. Manage the office of public defense;~~
- ~~B. Ensure the office of public defense employs the needed technical and public defense expertise to ensure effective delivery of public defense services;~~
- ~~C. Represent the department in all city, county, state and federal forums where the defense perspective is required; and~~
- ~~D. Develop appropriate standards and guidelines for the qualification and experience level of attorneys and paraprofessionals.))~~

A. The duties of the county public defender include:

- 1. Managing the department of public defense;
- 2. Ensuring that the department employs the needed technical and public defense expertise to ensure effective delivery of public defense services;
- 3. Preparing an annual budget for the department that evaluates and forecasts service delivery levels and program expenses for contractors, assigned counsel and 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](http://www.kingcounty.gov/healthservices/SubstanceAbuse/Boards/AdministrativeBoard.aspx)
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](http://www.kingcounty.gov/socialservices/veterans/AdvisoryBoards/VeteransProgramAdvisoryBoard.aspx)
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

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

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

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

Legal defense services through the department of public defense ~~((program))~~ may be made available, at his or her expense, to a person charged in King County with a felony of public notoriety when the court finds that the defendant is unable to employ 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

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

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

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

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

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

B.1. The sheriff is the designated bargaining agent of the county on all 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