



**King County**

**Committee of the Whole**

**STAFF REPORT**

<b>Agenda Item:</b>	5-6	<b>Name:</b>	Patrick Hamacher, Amy Tsai, Nick Wagner
<b>Proposed No.:</b>	2013-0212, 2013-0242	<b>Date:</b>	June 27, 2013
<b>Invited:</b>	<ul style="list-style-type: none"> <li>• Dave Chapman, Director, Office of Public Defense</li> <li>• Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB)</li> </ul>		

**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.<sup>1</sup> Finally, timelines for action are discussed.

**BACKGROUND**

Dolan Lawsuit

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<sup>1</sup> 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 service<sup>2</sup> 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

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<sup>2</sup> 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 policies<sup>3</sup> 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

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<sup>3</sup> 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](http://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](mailto: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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6-27-13

nw, at 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 and adding a new Section 350.20.60, new Section 350.20.65, new Section 555  
10 and new Section 899 to the King County Charter, as set forth below:

11 **Section 350.20. Executive Departments.**

12 The executive departments shall consist of the department of assessments, the  
13 department of judicial administration, the department of elections, the department of  
14 public defense and those agencies of the executive branch which are primarily engaged in  
15 the execution and enforcement of ordinances and statutes concerning the public peace,  
16 health and safety and which furnish or provide governmental services directly to or for  
17 the residents of the county.

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

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

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

33           The county public defender shall be appointed by the county executive, subject to  
34 confirmation by the county council, to a term that ends at the same time as the term of the  
35 county prosecuting attorney, unless removed earlier by the executive for cause, including  
36 the grounds for vacancy for elective office under Section 680 of this charter and such  
37 other grounds as the council may prescribe by ordinance. The removal may be appealed  
38 by the defender to the council by a process to be prescribed by ordinance. The council's  
39 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.**

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

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

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

75   **EFFECT:**

- 76           1. An unnecessary (redundant) reference to career service is removed.
- 77           2. Adds language that elected officials shall not interfere with the administration of  
 78 the constitutional or ethical duties of the county public defender or issue orders to  
 79 any officer, agent or employee of the department of public defense regarding  
 80 those duties.
- 81           3. Public Defense Advisory Committee is renamed Public Defense Advisory Board.
- 82           4. The details of the board's recommendations for Defender candidates to the  
 83 Executive are left to be specified by ordinance, but the fact that the Executive  
 84 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

nw, at 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 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

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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.**

**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 SECTION 2. 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](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

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