



# KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Signature Report

July 1, 2013

### Ordinance 17588

**Proposed No.** 2013-0215.3

**Sponsors** Patterson

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

14 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

15 **SECTION 1. Findings:**

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

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

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

27           D. In January 2006, a class action lawsuit was filed against King County,  
28   alleging that the employees of the private, nonprofit corporations were county employees  
29   and that King County had a duty to enroll them in PERS.

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

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

36           G. In March 2012, the trial court entered an order requiring King County to  
37   enroll the then-current employees of the private, nonprofit corporations in PERS. The  
38   county complied with this order.

39           H. On March 18, 2013, the King County council adopted Ordinance 17537  
40   approving a proposed settlement agreement that would recognize the current employees

41 of the private, nonprofit corporations as county employees on July 1, 2013. That  
42 settlement is still subject to and awaiting final and nonappealable judicial approval.

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

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

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

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

60 M. The proposed class action settlement calls for the county to recognize the  
61 employees who are working for the public defense contractors as of June 30, 2013 as  
62 King County employees with full benefits for their positions on July 1, 2013 ("the  
63 recognition date"). To meet the recognition date obligation and to provide a structure to

64 administer the public defense program, which shall be an executive department with  
65 divisions until such time that the council directs implementation of an alternative  
66 structure, enactment of this ordinance as an emergency ordinance is necessary.

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

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

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

74           1. Working in partnership with communities and other funders to develop,  
75 support and provide human services which emphasize prevention, early intervention and  
76 community education, and which strengthen individuals, families and communities in  
77 King County;

78           2. Managing programs which increase family self-sufficiency, enhance youth  
79 resiliency, reduce community violence and strengthen communities. The division shall  
80 also manage programs which address housing and community development needs, and  
81 help implement improvements identified in subarea and neighborhood plans for low and  
82 moderate income communities and population. Such programs are to include, but not be  
83 limited to, providing employment and training for youth and adults and providing  
84 assistance to indigent veterans and their families as authorized by chapters 41.02 and  
85 73.08 RCW. This division shall administer the county's federal housing and community  
86 development funds and other housing and community development programs;

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

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

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

93           1. Managing and operating a system of mental health services for acutely  
94 disturbed, seriously disturbed and chronically mentally ill children and adults;

95           2. Managing and operating a twenty-four-hour crisis response system, including  
96 civil commitment as a last resort;

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

99           4. Selecting appropriate agencies for the provision of mental health services  
100 developing, implementing and monitoring the provision and outcomes of contracted  
101 services;

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

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

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

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

114           E.)) The duties of the developmental disabilities division shall include the  
115 following:

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

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

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

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

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

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

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

135           3. Investigating and determining eligibility for legal defense services through  
136 the department. In addition, the department shall secure reimbursement from eligible  
137 persons, including the parents of juveniles receiving legal defense service through the  
138 department, when the person can afford to pay some or all of the cost to King County of  
139 providing them such legal defense services;

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

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

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

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

154        D. The department may provide services related to the Raising Our Youth As  
155        Leaders (ROYAL) project and is authorized to enter into appropriate contractual  
156        agreements.

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

159        The department of public defense shall be directed by a director who shall be  
160        appointed by the executive and confirmed by the council. The duties of the director shall  
161        include:

- 162        A. Managing the department of public defense;
- 163        B. Ensuring the department employs the needed technical and public defense  
164        expertise to ensure effective delivery of public defense services;
- 165        C. Representing the executive in all city, county, state and federal forums where  
166        the defense perspective is required;
- 167        D. Ensuring that the American Bar Association Ten Principles for a Public  
168        Defense System guide the management of the department and development of  
169        department standards for legal defense representation;
- 170        E. Following the Washington State Standards for Indigent Defense Services; and
- 171        F. Developing and maintaining appropriate standards and guidelines for the  
172        qualifications and experience level of public defense attorneys and paraprofessionals.

173        SECTION 5. A. The council requests the executive to negotiate any agreements  
174        related to implementation of the settlement agreement approved in Ordinance 17537 with  
175        minimal disruption to client services, including but not limited to agreements related to  
176        items in Attachment A.



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

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

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

191           A. The department shall manage cases and assign counsel in a manner that avoids  
192 conflicts of interest. The department shall adopt a policy to determine when a conflict  
193 exists and to avoid conflicting representation. If the department is unable to provide  
194 representation when a conflict exists, the department may contract for services of outside  
195 counsel or assign counsel from the assigned counsel panel.

196           B. The director may also contract for services of outside counsel if the director  
197 finds it appropriate to seek outside defense services and funding is available, taking into  
198 account the projected annual fiscal needs of the department.

199 C. If the department contracts for services of outside counsel, any entity that is able to  
200 provide the service may apply, including, but not limited to, private law firms, nonprofit entities,  
201 or a public corporation formed by the county whose chartered duties include the provision of  
202 public defense and related services.

203 SECTION 8. A. The public defense criminal justice reform advisory task force is  
204 hereby established.

205 B. The purpose of the task force is to utilize the expertise of the local and  
206 regional public defense communities to obtain their recommendation on county options  
207 for preserving the type of innovative thinking and criminal justice reform efforts that  
208 have been a part of the nationally recognized work of nonprofit public defender agencies  
209 serving King county over the past forty years.

210 C. 1. The task force shall issue a report and recommendation on the feasibility of  
211 the county using outside entities, such as one or more public corporations, nonprofit  
212 organizations or private corporations, to perform county public defense-related services  
213 that promote system improvements and efficiencies in the King county public defense  
214 system through innovative approaches to criminal justice reform. The report shall be  
215 advisory.

216 2. The task force should examine county public defense-related services that  
217 would supplement, not replace, the work performed by the department of public defense.

218 3. In making its report and recommendation, the task force should consider the  
219 pros and cons of each approach that it examines and the ability of each approach to

efficiently and effectively promote system improvements and efficiencies compared to what could be achieved by the department.

4. The task force should give strong consideration in its analysis to the fact that indigent defense services are supported by the county's general fund; the task force should consider the financial cost of any recommended alternatives.

5. The report shall be based upon the assumptions that the public defense attorneys providing a majority of the county's indigent defense services will be county employees, and that the settlement that received preliminary judicial approval in the Dolan lawsuit will be the final settlement. The task force shall include in its report and recommendation an assessment of the steps necessary to ensure that the independent entity will not be treated as an "arm and agency" of King County under the Dolan decision and create a risk of liability to the county for actions of the independent entity including, but not limited to, benefits such as enrollment in or contributions to the Public Employees Retirement System.

6. The task force is encouraged to seek input from other organizations, including but not limited to inviting other organizations to attend task force meetings as appropriate.

D. The task force shall consist of seven members, including one member appointed by the Washington state office of public defense, one member appointed by the King County Bar Association, two at-large members appointed by the executive, one member from the faculty of a Washington state law school appointed by the chair of the

council and two at-large members appointed by the chair of the council. The task force members shall be appointed by June 3, 2013.

E. Task force members must have demonstrated interest and expertise in the subject of public defense. Members should also have knowledge of government operations and budget, a demonstrated history of working collaboratively to find solutions to complex problems and a willingness to commit the time necessary to attend meetings of the task force and to actively support development of the task force report.

F. The task force shall have technical and administrative staff support provided by the executive and council. The task force shall file its report with the clerk of the council by August 30, 2013, who shall forward a copy to the executive, all councilmembers and the lead staff of the committee of the whole.

G. The county council shall reimburse task force members for mileage at the standard county reimbursement rate for travel within the county to and from scheduled task force meetings. The county council shall provide parking space free of charge in the county garage to task force members while attending meetings at which task force business is conducted.

NEW SECTION. SECTION 9. There is hereby added to K.C.C. Title 4A a new section to read as follows:

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

262        SECTION 10. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are  
263 each hereby amended to read as follows:

264        Legal defense services through the ~~((public defense program))~~department shall be  
265 made available to all eligible persons for whom counsel is constitutionally required. In  
266 addition, legal defense services through the ~~((public defense program will))~~department  
267 shall be made available when funds are available ~~((therefor))~~; to ~~((all))~~ any eligible  
268 person~~((s when there may be some factual likelihood of))~~ in legal proceedings arising in  
269 King county that may result in ~~((such))~~ the person's loss of liberty by an act of King  
270 ~~((€))~~county or any of its agencies, including, but not limited to, a violation of any law of  
271 the ~~((§))~~state of Washington or ordinance of King ~~((€))~~county, juvenile matters, mental  
272 illness and similar commitment proceedings, revocations and habeas corpus proceedings  
273 when ~~((such))~~they arise in King ~~((€))~~county.

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

280        SECTION 11. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are  
281 each hereby amended to read as follows:

282        A. A defendant requesting counsel at public expense shall pay a processing fee  
283 ~~((of twenty five dollars))~~, as specified in section 9 of this ordinance, as reimbursement to  
284 ~~((King))~~ the ~~((€))~~county for the administrative costs and expenses incurred in the

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

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

SECTION 12. A. Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027  
are each hereby repealed.

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

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

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

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

308        SECTION 13. The county council finds as a fact and declares that an emergency  
309        exists and that this ordinance is necessary for the immediate preservation of public peace,  
310        health or  
311

312 safety or for the support of county government and its existing public institutions.

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Ordinance 17588 was introduced on 4/29/2013 and passed as amended by the  
Metropolitan King County Council on 5/20/2013, by the following vote:

Yes: 8 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,  
Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr. Dembowski

No: 0

Excused: 1 - Ms. Patterson

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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Larry Gossett, Chair

ATTEST:

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Anne Noris, Clerk of the Council

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

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Dow Constantine, County Executive

**Attachments:** A. Transition Items