

6-27-13

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. Beginning in the 1970s, King County 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 ("PERS").

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 PERS.

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

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

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

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

33 I. On May 20, 2013, the council adopted Ordinance 17588, which established a
34 department of public defense on an interim basis, in order to ensure that current and
35 future clients would have access to public defense services without disruption as the
36 settlement agreement was implemented.

37 J. The county intends to maintain the high quality of public defense services that
38 public defense attorneys and staff have delivered and to which King County has long

39 been committed, by promoting independence from political influence, a quality work
40 force and operational efficiency in the provisions of public defense services.

41 K. Toward that end, the council has placed on the ballot, by Ordinance _____
42 (Proposed Ordinance 2013-0212), a charter amendment that would make the department
43 of public defense a charter-created department with a county public defender appointed
44 from among candidates nominated by an advisory board that is broadly representative of
45 entities and nonpartisan organizations that focus on issues related to criminal justice and
46 public defense. The board would also serve in an advisory capacity during the term of the
47 county public defender.

48 L. Only if the voters approve the charter amendment, will Sections 2 through 5 of
49 this ordinance take effect and implement the charter amendment. If the voters reject the
50 charter amendment, Sections 6 through 10 of this ordinance will take effect and
51 implement a public defense structure similar to that initially proposed by the executive.

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

54 A. The department of public defense is responsible ~~((to manage))~~ for managing
55 and ~~((be))~~ being fiscally accountable for the provision of public defense services. ~~((The~~
56 ~~department should have four divisions.))~~

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

58 1. Providing legal defense services in accordance with ~~((K.C.C. 2.60.050))~~
59 Section 350.20.60 of the King County Charter and other provisions of this chapter;

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

62 3. (~~Investigating~~) Screening and determining eligibility for legal defense
63 services through the department. In addition, the department shall secure reimbursement
64 from eligible persons, including the parents of juveniles receiving legal defense service
65 through the department, when the person can afford to pay some or all of the cost to King
66 County of providing them such legal defense services;

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

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

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

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

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

SECTION 3. Ordinance 17588, Section 4, and K.C.C. 2.60.____ are each hereby amended to read as follows:

A. The department of public defense shall be directed by ~~((a director who shall be appointed by the executive and confirmed by the council. The duties of the director))~~the county public defender, whose duties shall include:

~~((A.))~~ 1. Managing the department of public defense;

~~((B.))~~ 2. Ensuring the department employs the needed technical and public defense expertise to ensure effective delivery of public defense services;

~~((C.))~~ 3. Representing the executive in all city, county, state and federal forums where the defense perspective is required;

~~((D.))~~ 4. Ensuring that the American Bar Association Ten Principles for a Public Defense Delivery System, as approved by the American Bar Association House of Delegates in February of 2002, guide the management of the department and development of department standards for legal defense representation, and reporting on April 1 of each year on the results of the county public defender's efforts in that regard, in the form of paper and electronic copies of the report filed with the clerk of the council, who shall forward electronic copies to all councilmembers, to the chair of the public defense advisory board, to the lead staff of the budget and fiscal management committee or its successor and to the lead staff of the law, justice, health and human services committee or its successor;

~~((E.))~~ 5. Following the Washington State Standards for Indigent Defense Services;

106 ~~((F.))~~ 6. Developing and maintaining appropriate standards and guidelines for
107 the qualifications and experience level of public defense attorneys and paraprofessionals;
108 ~~((and))~~

109 7. Working collaboratively with the public defense advisory board and
110 providing relevant, non-privileged information to the board upon its reasonable request;
111 and

112 8. Advocating for system improvements and promoting efficiencies and equity
113 for indigent individuals in the criminal justice system.

114 B. The county public defender shall be appointed by the executive ~~((and~~
115 confirmed)), subject to confirmation by the council. The executive shall choose from
116 among three candidates nominated by the public defense advisory board, provided, that
117 the executive may request three additional candidates from the public defense advisory
118 board, and the executive may then appoint the county public defender from among the six
119 candidates, subject to confirmation by the council. Confirmation requires the affirmative
120 vote of at least five members of the council.

121 C. The county public defender shall, within two years of appointment, be an
122 attorney admitted to practice law in the courts of the state of Washington and an "active"
123 member of the Washington State Bar Association in good status and shall, at the time of
124 appointment, have at least seven years of experience as an attorney primarily practicing
125 criminal defense, including both felonies and misdemeanors, as well as supervisory and
126 managerial experience.

127 D. The term of office of the county public defender shall end at the same time as
128 the term of the county prosecuting attorney. The county executive may reappoint the

county public defender to additional four-year terms, subject to confirmation by the
county council. Confirmation requires the affirmative votes of at least five members of
the council.

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

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

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

3. Conviction of a crime;

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

5. Failure to manage the department effectively.

F. Removal may be appealed by the defender to the council within ten days of the
removal. The council shall review de novo the grounds for removal and either confirm or
reject the removal within thirty days of the appeal by an affirmative vote of five
members, or else the executive's decision shall stand. A determination by the council
made within thirty days of the appeal is final.

G. The county public defender shall receive compensation at the same rate as the
prosecuting attorney.

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

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

158 B. In performing its duties, the board shall work collaboratively with the county
159 public defender and may reasonably request relevant, non-privileged information from
160 the county public defender. The board through its chair shall consult with the county
161 prosecutor, courts, and department of public defense in the performance of all of its
162 duties except for the recommendation of candidates.

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

166 D. The board shall consist of one representative from each of the following:
167 1. The Washington Association of Criminal Defense Lawyers;
168 2. The Washington state Office of Public Defense;
169 3. The Washington Defender Association;
170 4. The King County Bar Association;
171 5. A minority bar association;
172 6. A nonpartisan organization active in King County that focuses on mental
173 health issues;

174 7. A nonpartisan organization active in King County that focuses on substance
175 abuse issues;

176 8. A nonpartisan organization active in King County that focuses on issues
177 concerning military veterans;

178 9. A nonpartisan organization active in King County that focuses on issues
179 related to poverty;

180 10. A nonpartisan organization active in King County that focuses on juvenile
181 justice issues; and

182 11. A nonpartisan organization active in King County that focuses on
183 immigration issues.

184 E. Members of the board shall serve staggered three-year terms and until their
185 successors are nominated and confirmed, except that the members designated in
186 subsections D.1., 2., 3. and 4. of this section shall serve an initial term of one year and the
187 members designated in subsections D.5., 6., 7. and 8. of this section shall serve an initial
188 term of two years. If a member leaves the board midterm, the person appointed as a
189 replacement shall serve the remainder of the term, rather than beginning a new term of
190 three years. The county council may reappoint board members for additional three-year
191 terms and may remove any board member with the affirmative votes of at least five
192 councilmembers. Members of the board shall not be compensated for the performance of
193 their duties as members of the board, but may be paid subsistence rates and mileage in
194 amounts consistent with county policy.

195 F. The process for filling vacancies on the board is:

196 1. Upon learning of a pending or existing vacancy or thirty days before a
197 scheduled vacancy, the clerk of the council shall provide written notice of the vacancy to
198 the executive, all councilmembers and

199 a. to the represented organization for vacancies in the board seats designated in
200 subsections D.1. through D.4.;

201 b. to each of the bar association organizations identified as a minority bar
202 association by the Washington State Bar Association for a vacancy in the board seat
203 designated in subsection D.5.; and

204 c. by publication of notice of the vacancy in the official county newspaper and
205 in the largest newspaper of general circulation within the county for the board seats
206 designated in subsections D.6. through D.11.

207 The notice shall specify the deadlines established below.

208 2. Within sixty days after receiving notice from the clerk of the council, the
209 represented organization, each minority bar association organization that wishes to do so,
210 and each nonpartisan organization with the required subject matter focus that wishes to
211 do so shall submit in writing, in both hard copy and electronic format, to the county
212 executive and contemporaneously to the clerk of the council, the names of three
213 candidates for appointment to fill a vacancy in the board seat for which notice was
214 required to be given to the organization, together with the resumé of each candidate and
215 all other written materials that the organization considered in deciding to recommend the
216 candidate. The organization shall not rate the candidates, but may provide a brief
217 description of the strengths of each candidate. The clerk of the council shall provide an
218 electronic copy of the resumes and other written materials to each councilmember.

219 3. The county executive shall make an appointment, which the county council
220 shall confirm or reject, in accordance with section G. below.

221 G. Within thirty days after the applicable deadline established in section F.2.
222 above, the county executive shall appoint one of the recommended candidates by
223 providing written notice of the appointment to the clerk of the council, who shall provide
224 an electronic copy of the notice to each councilmember. The county council shall confirm
225 or reject the executive's appointee in the manner provided in K.C.C. chapter 2.28 for
226 confirmation of appointments to boards. A motion to confirm the executive's appointee
227 shall be referred for committee consideration to the council's law, justice, health and
228 human services committee, or its successor.

229 H. Each member of the advisory board shall have substantial experience and
230 expertise that are relevant to the work of the department of public defense and shall have
231 an ability and willingness to commit the time necessary to attend meetings and participate
232 effectively as a member of the board. A majority of the members should have substantial
233 experience in providing indigent defense representation. To the extent practicable, the
234 board membership shall reflect the diversity of the county. A member may not, while
235 serving on the committee, hold elective public office (except precinct committee officer),
236 be a candidate for elective public office (except precinct committee officer) or serve as a
237 judge, a prosecuting attorney, a public defender, or be an employee of a court, the county
238 prosecuting attorney, or the county department of public defense.

239 I. The board shall meet at least once every two months and shall issue at least two
240 reports to the executive and the council each calendar year: once on the board's review of
241 the proposed budget for public defense; and once on the state of county public defense.

The report on the state of county public defense shall include an assessment of the progress of the county in promoting equity in the criminal justice system and may include recommendations for advancing equity.

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

K. Within ninety days after a vacancy occurs, or the board learns of an anticipated vacancy, in the office of county public defender, the public defense advisory board shall provide to the county executive, and contemporaneously to the clerk of the county council, the names of exactly three qualified candidates to fill the vacancy, together with copies of the candidates' biographical and descriptive information and all other written information upon which the board relied in choosing the three candidates. The board shall not rank the candidates, but may summarize the particular strengths of each candidate. Upon request by the executive, the board shall provide the names and information of three additional candidates.

L. The executive and council shall jointly provide for staffing of the advisory board.

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

Legal defense services through the department shall be made available to all eligible persons for whom counsel is constitutionally required. In addition, legal defense

services through the department shall be made available when funds are available: to any eligible person in legal proceedings arising in King County that may result in the person's loss of liberty by an act of King County or any of its agencies, including, but not limited to, criminal proceedings alleging a violation of any law of the state of Washington or ordinance of King County, juvenile matters, mental illness and similar commitment proceedings, revocations and habeas corpus proceedings when they arise in King County; and to eligible parents and children in dependency proceedings arising in King County.

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

SECTION 6. Ordinance 383, Section 5, as amended, and K.C.C. 2.60.050 are each hereby amended to read as follows:

Legal defense services through the department shall be made available to all eligible persons for whom counsel is constitutionally required. In addition, legal defense services through the department shall be made available when funds are available: to any eligible person in legal proceedings arising in King county that may result in the person's loss of liberty by an act of King county or any of its agencies, including, but not limited to, criminal proceedings alleging a violation of any law of the state of Washington or ordinance of King county, juvenile matters, mental illness and similar commitment

proceedings, revocations and habeas corpus proceedings when they arise in King county;
and to eligible parents and children in dependency proceedings arising in King county.

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

SECTION 7. Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020 are each hereby amended to read as follows:

A. The department of public defense is responsible ~~((to manage))~~ for managing and ~~((be))~~ being fiscally accountable for the provision of public defense services. ~~((The department should have four divisions.))~~

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

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

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

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

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

312 5. Assigning cases to one of the two divisions of the department staffed by
313 attorneys who shall represent the highest percentage possible of all caseloads, with
314 unavoidable conflicts of interest such as in complex cases that may involve multiple
315 defendants or multiple charges or other special circumstances being the cases receiving
316 representation by assigned counsel~~((Assigning cases to assigned counsel where conflicts~~
317 ~~of interest or other special circumstances exist which require use of assigned counsel));~~
318 and

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

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

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

SECTION 8. Ordinance 17588, Section 4, and K.C.C. 2.60.____ are each hereby amended to read as follows:

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

- A. Managing the department of public defense;
- B. Ensuring the department employs the needed technical and public defense expertise to ensure effective delivery of public defense services;
- C. Representing the executive in all city, county, state and federal forums where the defense perspective is required;
- D. Ensuring that the American Bar Association Ten Principles for a Public Defense System guide the management of the department and development of department standards for legal defense representation;
- E. Following the Washington State Standards for Indigent Defense Services;
- ~~((and))~~
- F. Developing and maintaining appropriate standards and guidelines for the qualifications and experience level of public defense attorneys and paraprofessionals;
- G. Consult with the public defense advisory board and receive its recommendations on department policies, operations, and matters of budget..

NEW SECTION. SECTION 9. There is hereby added to K.C.C. chapter 2.60 a new section to read as follows:

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

355 B. The board shall review the activities and plans of the department of public
356 defense and make recommendations to the county public defender, and advise the county
357 public defender on matters of concern to the practice of public defense in King County.

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

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

- 363 1. One member representing the Washington state Bar Association;
- 364 2. One member representing the King County Bar Association;
- 365 3. One member representing a minority bar association with representation
366 revolving among these groups each membership term;
- 367 4. One member shall be a judge retired from the King County superior or
368 district court;
- 369 5. One member from the faculty of a law school in Washington state; and
- 370 6. Two members shall be associated with community organizations that serve
371 the indigent population of King County.

372 E. Members of the board shall serve two-year terms and until their successors are
373 nominated and confirmed. Beginning in 2013, initial member representatives in
374 designated in subsection D.1, 3. and 5. of this section shall be appointed for one-year

terms, and member representatives designated in subsection D.2, 4. and 6. of this section shall be appointed for two-year terms. The terms of designated representative members shall coincide with the terms of the persons who are vacating those seats. Members of the board shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts consistent with county policy.

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

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

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

SECTION 10. Ordinance 17588, Section 7, and K.C.C. 2.60.____ are each hereby repealed.

SECTION 11. Sections 2 through 5 of this ordinance take effect upon certification that the charter amendment proposed by Ordinance ____ (Proposed Ordinance 2013-0212) has been approved by the voters. Sections 6 through 10 of this ordinance take effect upon certification that the charter amendment proposed by Ordinance ____ (Proposed Ordinance 2013-0212) has been rejected by the voters.

398 "

399 **EFFECTS:**

- 400 • Executive can make a one-time request for advisory board to submit three
401 additional recommendations for Public Defender.
- 402 • Qualifications are all contained in implementing ordinance instead of charter
403 amendment.
- 404 • Executive removes the Defender for-cause, subject to appeal to the Council by the
405 Defender within 10 days. Council has 30 days to decide by majority vote or else
406 Executive decision stands.
- 407 • Advisory board advises Executive and Council on social justice matters related to
408 public defense.
- 409 • The advisory board must consult with the prosecutor, courts and department of
410 public defense in its review and advisory functions (not in the recommendation of
411 candidates).
- 412 • Advisory board members are 11, including a representative for immigration
413 issues.
- 414 • Executive appoints advisory board members subject to confirmation.
- 415 • Exec proposed structure is generally implemented if Charter Amendment fails at
416 November election.