



## King County

# Law, Justice, Health and Human Services Committee

### STAFF REPORT

<b>Agenda Item:</b>	4	<b>Name:</b>	Kelli Carroll
<b>Proposed No.:</b>	2010-0580	<b>Date:</b>	September 13, 2011
<b>Invited:</b>	Gail Stone, Law and Justice Policy Advisor, Office of the Executive		

### SUBJECT

AN ORDINANCE that would change the reporting relationship for the Office of the Public Defender to report directly to the County Executive, instead of the director of the Department of Community and Human Services.

### SUMMARY

Proposed Ordinance 2010-0580 would make changes to the reporting structure of the Office of Public Defense. It would change the direct reporting and oversight of the office from the director of DCHS to the Executive. The proposed oversight and reporting structure would be similar to that of the Office of Information Resources Management.

This committee received an initial briefing on the proposed legislation on February 2 and deferred action. In the intervening months, Council and the Executive have collaborated on a striking amendment to the original proposed legislation (attachment 2).

This is the second briefing on the proposed striking amendment and the third on the underlying proposed legislation.

### BACKGROUND

Public defense services are mandated by the U.S. Constitution, the Washington State Constitution and other state statutes. In Washington State, the cost of providing indigent<sup>1</sup> defense services is primarily the responsibility of local governments – counties and cities. As a regional government, King County is responsible for providing indigent defense services for felony and juvenile defendants on a county-wide basis, and as the local government, the county must provide defense services for misdemeanants in the unincorporated area. Cities are responsible for providing defense services for misdemeanors that occur within their borders.

King County Code 2.60.101 states that indigent defense services will be made available to provide legal representation for those that are eligible. Washington State law, RCW 10.101, defines who is indigent. In general, King County's Office of the Public Defender (OPD) provides attorneys to those people who qualify based upon their financial status and are facing the possibility of jail time or of losing their children.

<sup>1</sup> RCW 10.101.010(1) defines "indigent" as including those who are receiving public assistance, involuntarily committed to a mental health facility, or near the federally established poverty level; and those who are unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

Unlike most jurisdictions in the nation, King County has contracted with non-profit agencies for indigent legal defense services for over 30 years. OPD negotiates the contracts for defense services with the non-profit organizations and assigns cases to the defender agencies<sup>2</sup>. These annual contracts are subject to approval by the County Council. The defender firms are (1) the Associated Counsel for the Accused (ACA), (2) the Northwest Defenders Association (NDA), (3) the Society of Counsel Representing Accused Persons (SCRAP), and (4) The Defender Association (TDA). Under these defender agency contracts, the county pays for “caseload” on a workload basis (using increments called “case credits” which represent the number of attorneys and other resources, such as expert witnesses and investigators that are allocated to each case).

Organizationally, the Office of the Public Defender is currently under the administrative control of the county’s Department of Community and Human Services (DCHS) and is headed by an attorney with prior public defense and management experience. OPD is responsible for preparing an annual budget for the county’s public defense program. The primary cost driver is caseload, which is controlled by the number of arrests and case filings.

### **The Case Weighting Study**

The Spangenberg Project (TSP) was engaged to conduct a Case Weighting Study (CWS) in 2010. TSP noted that King County has been seen as among the finest in the nation for the provision of public defense services and stressed that King County public defenders provide effective representation for defendants despite changes in filing practices, increasing case complexity, inadequate staff support, and communication challenges. At the same time as TSP noted that King County takes pride in its historical commitment to public defense and that despite the challenges and work load issues, defenders strive to provide the highest level of representation, the current level of effectiveness appeared to be unsustainable. Simply, after systematic quantitative assessment of workload and qualitative interviews with justice system stakeholders, TSP found that the current system of public defense cannot continue without changes.

At the direction of this committee, a work of a group was convened to develop and review options related to implementing the case weighting methodology for the county’s defense services. Through the course of the group’s work, the numerous efforts by the Executive to identify and implement efficiencies that streamline OPD operations were discussed. As of May 24 when this committee was briefed on the case weighting work group’s report, the Executive had undertaken the following steps:

- Formalizing regular meetings between public defense contract agency directors and OPD;
- Monthly meetings between OPD, public defense contractors and DAJD
- Meetings between the public defense contractors, the Director of Performance, Strategy and Budget, the Office of the Executive and OPD, to provide information on budget issues and processes, as well as to hear directly from the public defense contractors about budget issues and their recommendations for savings or efficiencies;
- Making changes to the expert witness request system designed to streamline the process;
- Exploring ways to simplify public defense agency contracts;
- Initiating system wide discussions on criminal justice issues with the goal of finding efficiencies and savings throughout the system, and

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<sup>2</sup> OPD is also responsible for maintaining a list of lawyers available to handle cases that agencies cannot accept due to a conflict of interest. This list of independent contract attorneys is known as the Assigned Counsel Panel.

- Encouraging public defense contractors to seek caseload relief by fully utilizing the interim case weighting system and the additional case credits currently available to them under the contract.

## **ANALYSIS**

***Proposed Ordinance 2010-0580:*** The proposed legislation would change the direct reporting and oversight of the office from the director of DCHS to the Executive. The proposed oversight and reporting structure would be similar to that of the Office of Information Resources Management.

The legislative statement of intent of the proposed ordinance preamble is to "facilitate effective collaboration and planning throughout the county's criminal justice [CJ] system", to "provide for an accountable and transparent system that will encourage service delivery comparable to other county criminal justice providers", and "to enhance performance of the office".

Attachment 5, the staff report dated February 2, 2011, contains detailed information on the underlying proposed legislation.

***Striking Amendment to Proposed Ordinance 2010-0580:*** Striking amendment (attachment 2) makes technical changes to the underlying proposed ordinance. It also accomplishes the following substantive items:

1. **Provides for the Executive to appoint the director of the division.** Currently, the director of DCHS appoints the leader of the Office of Public Defense. Though OPD would remain as a division within DCHS and report to the director of DCHS, the director of OPD would be appointed by the Executive. The Council would continue its duty to confirm the candidate.
2. **Changes the name of the division and the name of the leader of the division** from the "Office of the Public Defender" to the "Office of Public Defense" and the leader of the division from "the public defender" to a "director of the Office of Public Defense".
3. **Amends the selection process:** Under the proposed striking amendment, the Executive would consult with representatives of the criminal justice and broader community during the recruitment and selection of the appointee, rather than convening an advisory committee to assist the director of DCHS in the appointment process. See attachment 4 for a comparison of processes.
4. **Revises the required skills and duties of the director** of Public Defense, replaces the requirement that the public defender be a licensed attorney with prior experience in public defense and management with the requirement that the director of the Office of Public Defense "ensure the office of public defense employs the needed technical and public defense expertise to ensure effective delivery of public defense services".

The effects of the changes contained in the striking amendment to the underlying proposed legislation are as follows

- OPD would remain as a division under DCHS
- The name of the division would change along with the title of the leader of the organization
- The leader of OPD would continue to report to the director of the department, rather than report directly to the Executive

- OPD would be required to employ the technical and public defense expertise to ensure the effective delivery of public defense services, but the leader would not be required to be a licensed attorney

**Follow up from August 30 Committee Meeting:** Committee members raised questions related to changes to the selection process, name of the organization and job title. Attachment 4, provided by the Department of Community and Human Services, provides a side by side comparison of the previous, and current iterations of the office, as well as other aspects of the proposed striking amendment if enacted.

**Legal Review:** The striking amendment to the proposed ordinance has been reviewed by the Prosecutor's Office (PAO) and the Code Reviser. Technical amendments were recommended and are shown in the striking amendment S3, which is attachment 2.

The technical amendments include making corrections to additional sections of King County Code where the Office of the Public Defender, or the Public Defender are referenced, but were not corrected by the previous striking amendment S2 dated August 26, 2011. No substantive issues were identified in the proposed striking amendment by the PAO.

A title amendment would also be required with the striking amendment. It is included as attachment 3.

## **ATTACHMENTS**

1. Proposed Ordinance 2010-0580
2. Striking Amendment to Proposed Ordinance 2010-0580
3. Title amendment
4. Legislative Requirements Comparison
5. Staff report dated February 2, 2011



**KING COUNTY**  
**Signature Report**  
**September 12, 2011**

**Attachment 1**  
1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Ordinance**

**Proposed No.** 2010-0580.1

**Sponsors** Ferguson and Gossett

1 AN ORDINANCE relating to the office of the public  
2 defender; changing direct reporting of the office of public  
3 defense from the director of the department of community  
4 and human services to the executive; and amending  
5 Ordinance 12075, Section 3, as amended, and K.C.C.  
6 2.16.025, Ordinance 11955, Section 6, as amended, and  
7 K.C.C. 2.16.130 and Ordinance 383, Section 2, as  
8 amended, and K.C.C. 2.60.020 and repealing Ordinance  
9 14412, Section 2, and K.C.C. 2.60.025.

10 **PREAMBLE:**

11 Chapter 10.101 RCW requires King County to provide effective legal  
12 representation, consistent with the constitutional requirements of fairness,  
13 equal protection and due process in all cases where there is a right to  
14 counsel for indigent persons and persons who are indigent and able to  
15 contribute. The office of the public defender implements these statutory  
16 guarantees of counsel and ensures the effective and efficient delivery of  
17 indigent defense services by contracting with legal defense agencies to  
18 represent people who are accused of a crime and cannot afford an  
19 attorney. King County provides legal help to adults and children who are

20 accused of a crime and cannot afford an attorney by offering services for  
21 those accused of a felony or misdemeanor, as well as representation for  
22 services such as juvenile dependency, civil commitment or civil contempt.

23 The reporting structure for the office of the public defender in this  
24 ordinance will facilitate effective collaboration and planning throughout  
25 the county's criminal justice system and will provide for an accountable  
26 and transparent system that will encourage service delivery comparable to  
27 other county criminal justice providers and will enhance performance of  
28 the office.

29 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

30 SECTION 1. Ordinance 12075, Section 3, as amended, and K.C.C. 2.16.025 are  
31 each hereby amended to read as follows:

32 The county executive shall manage and be fiscally accountable for the office of  
33 management and budget, the office of strategic planning and performance management  
34 ~~((and))~~, the office of labor relations and the office of public defense.

35 A. The office of management and budget functions and responsibilities shall  
36 include, but not be limited to:

37 1. Planning, preparing and managing, with emphasis on fiscal management and  
38 control aspects, the annual operating and capital improvement budgets;

39 2. Preparing forecasts of and monitor revenues;

40 3. Monitoring expenditures and work programs in accordance with Section 475  
41 of the King County Charter;

42           4. Developing and preparing expenditure plans and ordinances to manage the  
43 implementation of the operating and capital improvement budgets throughout the fiscal  
44 year;

45           5. Developing and using outcome-based performance indicators to monitor and  
46 evaluate the effectiveness and efficiency of county agencies in collaboration with the  
47 office of strategic planning and performance management;

48           6. Formulating and implementing financial policies regarding revenues and  
49 expenditures for the county and other applicable agencies;

50           7. Performing program analysis, and contract and performance evaluation  
51 review in collaboration with the office of strategic planning and performance  
52 management; and

53           8. Developing and transmitting to the council, concurrent with the annual  
54 proposed budget, supporting materials consistent with K.C.C. 4.04.030.

55           B. The office of strategic planning and performance management functions and  
56 responsibilities shall include, but not be limited to:

57           1. Performance management and accountability:

58           a. providing leadership and coordination of the performance management and  
59 accountability system countywide;

60           b. overseeing the development of strategic plans and business plans for each  
61 executive branch department and office;

62           e. providing technical assistance on the development of strategic plans and  
63 business plans for agencies;

- 64 f. developing and using outcome-based performance indicators to monitor and  
65 evaluate the effectiveness and efficiency of county agencies in collaboration with the  
66 office of budget and management;
- 67 g. overseeing the production of an annual performance report for the executive  
68 branch;
- 69 h. Managing an ongoing review of executive branch departments' and offices'  
70 performance, known as the KingStat program;
- 71 i. collecting and analyzing land development, population, housing, natural  
72 resource enhancement, transportation and economic activity data to aid decision making  
73 and to support implementation of county plans and programs, including benchmarks; and
- 74 j. conducting public engagement about county performance management and  
75 reporting activities;
- 76 2. Business relations and economic development:
- 77 a. developing proposed policies to address regional, unincorporated urban, and  
78 rural economic development;
- 79 b. establishing, fostering and maintaining healthy relations with business and  
80 industry;
- 81 c. implementing strategies and developing opportunities that include partnering  
82 with, cities, the Port of Seattle and other economic entities on regional and subregional  
83 economic development projects;
- 84 d. developing and implementing strategies to promote economic revitalization  
85 and equitable development in urban unincorporated areas including the possible assembly  
86 of property for the purpose of redevelopment;

- 87 e. refining and implementing strategies in the county's rural economic  
88 strategies to preserve and enhance the rural economic base so that the rural area can be a  
89 place to both live and work;
- 90 f. assisting communities and businesses in creating economic opportunities,  
91 promoting a diversified economy and promoting job creation with the emphasis on  
92 family-wage jobs;
- 93 g. managing the contracting opportunities program to increase opportunities  
94 for small contractors and suppliers to participate on county-funded contracts. Submit an  
95 annual report as required by Ordinance 15703;
- 96 h. Managing the apprenticeship program to optimize the number of apprentices  
97 working on county construction projects. Submit an annual report as required by  
98 Ordinance 12787;
- 99 i. serving as the disadvantaged business enterprise liaison officer for federal  
100 Department of Transportation and other federal grant program purposes; and
- 101 j. managing the county's historic preservation program including landmark  
102 designation, protection, and enhancement to support tourism development, downtown  
103 revitalization and environmental and cultural sustainability;
- 104 3. Strategic initiatives and policy development
- 105 a. coordinating executive initiatives across departments and agencies;
- 106 b. facilitating interdepartmental, interagency and interbranch teams on  
107 multidisciplinary issues;
- 108 c. leading governance transition efforts for the urban area consistent with the  
109 Growth Management Act;

110 d. providing technical assistance in the update of regional growth management  
111 planning efforts including the Countywide Planning Policies and distribution of  
112 jurisdictional population and employment growth targets;

113 e. providing assistance in the development of agency and system planning  
114 efforts such as operational master plans; and

115 f. serving as the liaison to the Boundary Review Board for King County.

116 C. The office of labor relations functions and responsibilities shall include, but  
117 not be limited to:

118 1. Representing county agencies in the collective bargaining process as required  
119 by chapter 41.56 RCW;

120 2. Developing and maintaining databases of information relevant to the  
121 collective bargaining process;

122 3. Representing county agencies in labor arbitrations, appeals, and hearings  
123 including those in chapter 41.56 RCW and required by K.C.C. Title 3, in collaboration  
124 with the human resources division;

125 4. Administering labor contracts and providing consultation to county agencies  
126 regarding the terms and implementation of negotiated labor agreements, in collaboration  
127 with the human resources division;

128 5. Advising the executive and council on overall county labor policies; and

129 6. Providing resources for labor relations training for county agencies, the  
130 executive, the council, and others, in collaboration with the human resources division.

131 D. The office of public defense functions and responsibilities shall include, but  
132 not be limited to those duties specified in K.C.C. chapter 2.60.

133           E. The executive may assign or delegate budgeting, performance management  
134 and accountability, business relations, economic development and strategic initiatives and  
135 policy development functions to employees in the office of the executive but shall not  
136 assign or delegate those functions to any departments.

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

139           A. The department of community and human services is responsible to manage  
140 and be fiscally accountable for the community services division, the mental health,  
141 chemical abuse and dependency services division(~~(, public defense division,)~~) and the  
142 developmental disabilities division.

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

144           1. Working in partnership with communities and other funders to develop,  
145 support and provide human services which emphasize prevention, early intervention, and  
146 community education, and which strengthen individuals, families and communities in  
147 King County;

148           2. Managing programs which increase family self-sufficiency, enhance youth  
149 resiliency, reduce community violence and strengthen communities. The division shall  
150 also manage programs which address housing and community development needs, and  
151 help implement improvements identified in subarea and neighborhood plans for low and  
152 moderate income communities and population. Such programs are to include, but not be  
153 limited to, providing employment and training for youth and adults and providing  
154 assistance to indigent veterans and their families as authorized by chapters 41.02 and

155 73.08 RCW. This division shall administer the county's federal housing and community  
156 development funds and other housing and community development programs; and

157 3. Developing housing and community development policies and programs to  
158 implement the growth management policies throughout King County to provide  
159 affordable housing to low and moderate income residents.

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

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

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

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

168 4. Selecting appropriate agencies for the provision of mental health services  
169 developing, implementing and monitoring the provision and outcomes of contracted  
170 services;

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

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

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

181           D. ~~((The duties of the public defense division shall include those duties specified  
182 in K.C.C. chapter 2.60.~~

183           E.)) The duties of the developmental disabilities division shall include the  
184 following:

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

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

190           SECTION 3. Ordinance 383, Section 2, as amended, and K.C.C. 2.60.020 are  
191 each hereby amended to read as follows:

192           There is hereby established ~~((within the department of community and human  
193 services))~~ the office of the public defender. A public defender shall be appointed by the  
194 ~~((director of the department of community and human services))~~ executive and  
195 ~~((approved))~~ confirmed by the county council. The public defender shall be a licensed  
196 attorney with experience in public defense and management. To assist the ~~((director))~~  
197 executive in the selection of a public defender, there shall be convened an advisory  
198 committee, which shall be representative of the criminal justice system and the broader  
199 community. The executive shall appoint the public defender from a list of three names  
200 submitted by the advisory committee.

201            SECTION 4. Ordinance 14412, Section 2, and K.C.C. 2.60.025 are each hereby  
202 repealed.  
203

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:** None

09-13-11



Sponsor: Ferguson

Proposed No.: 2010-0580

1 **STRIKING AMENDMENT TO PROPOSED ORDINANCE 2010-0580, VERSION**

2 **1**

3 On page 1, beginning on line 10, strike everything through page 10, line 202, and insert:

4 "PREAMBLE:

5 Chapter 10.101 RCW requires King County to provide effective legal  
6 representation, consistent with the constitutional requirements of fairness,  
7 equal protection and due process in all cases where there is a right to  
8 counsel for indigent persons and persons who are indigent and able to  
9 contribute.

10 King County regards this responsibility as essential to ensuring justice and  
11 protecting the rights of its residents. As such, the county offers legal  
12 representation to adults and juveniles who are accused of a crime and  
13 cannot afford an attorney, as well as providing representation for services  
14 such as juvenile dependency, civil commitment or civil contempt.

15 To carry out this work, the county has established the office of the public  
16 defender, housed within the department of community and human  
17 services. Currently, the public defender, who serves as both a technical

18 expert and the manager responsible for the administration of high quality  
19 public defense in King County, is appointed by the director of the  
20 department of community and human services.

21 This ordinance will enhance the accountability and performance of the  
22 office of public defense, establishing a director, appointed by the  
23 executive, responsible for the strategic administration of the office and the  
24 provision of high quality defense services for the indigent and near  
25 indigent.

26 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

27 SECTION 1. Ordinance 11955, Section 12, as amended, and K.C.C. 2.16.100 are  
28 each hereby amended to read as follows:

29 A. Exemptions from the requirements of the career service personnel system  
30 shall be consistent with the provisions of Sections 550, 350.10 and 350.20 of the King  
31 County Charter. Key subordinate units, as determined by the county council, and  
32 departmental divisions shall be considered to be executive departments. Divisions of  
33 administrative offices shall be considered to be administrative offices for the purpose of  
34 determining the applicability of the charter provisions.

35 B. The county administrative officer, directors, chief officers and supervisors of  
36 departments, administrative offices, divisions, key subordinate units and other units of  
37 county government as required by law shall be exempt from the requirements and  
38 provisions of the career service personnel system.

39 C.1. The following are determined by the council to be key subordinate units due  
40 to the nature of the programs involved and their public policy implications and  
41 appointments to these positions shall be subject to confirmation by the council:

- 42 a. the director of the office of public defense (~~(division)~~);
- 43 b. the chief information officer of the administrative office of information  
44 resource management;
- 45 c. the manager of the elections division;
- 46 d. the superintendent of elections in the elections division; and
- 47 e. the manager of the records and licensing services division.

48 2. When an ordinance is enacted designating a position as a key subordinate  
49 unit, no person then serving in the position shall continue to serve for more than ninety  
50 days after such enactment, unless reappointed by the executive and confirmed by the  
51 council.

52 D. If an administrative assistant or a confidential secretary, or both, for each  
53 director, chief officer of an administrative office and supervisor of a key subordinate unit  
54 are authorized, those positions are exempt from the requirements and provisions of the  
55 career service personnel system.

56 SECTION 2. Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110 are  
57 each hereby amended to read as follows:

58 A. The county executive shall appoint the county administrative officer and the  
59 director of each executive department, except the departments of assessments, public  
60 safety, elections and judicial administration. The county executive shall also appoint the  
61 division director of the youth detention facility through a competitive search process that

62 includes participation by the superior court judges. The county executive shall also  
63 appoint the director of the office of public defense.

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

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

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

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

75 E.1.a. All individuals appointed by the county executive, under Section 340.40 of  
76 the King County Charter, shall serve in an acting capacity, unless confirmed by the  
77 council. The executive is authorized to appoint a person to serve in an acting capacity to  
78 fill a position requiring council confirmation for a period of no greater than one hundred  
79 fifty days. The executive shall notify the council within ninety days concerning the status  
80 of his or her search for qualified candidates for appointment to the vacant position.

81 Thereafter, the individual may continue serving in an acting capacity for successive sixty-  
82 day periods only with approval by motion of the county council. The council shall grant  
83 at least one successive sixty-day extension if the executive certifies to the council's  
84 satisfaction that the executive is actively pursuing a search for qualified candidates for

85 appointment to the vacant position. If no appointment is transmitted to the council for  
86 confirmation during the authorized period, the position shall be considered vacant for  
87 purposes of exercise of any authority given to the position under ordinance and no salary  
88 shall be paid for the position while it is so vacant.

89 ~~((2.))~~ b. Within seven calendar days of any executive appointment that is subject  
90 to council confirmation, the executive shall deliver written notice of said appointment to  
91 the council accompanied by a proposed motion confirming the appointment.

92 ~~((3.))~~ c. Upon the receipt of the notification by the executive of an appointment,  
93 accompanied by the proposed motion, the council shall act to consider confirmation of  
94 the appointment within ninety days. Approval of the introduced motion by a majority of  
95 the council shall constitute confirmation of the appointee. Once confirmed, the appointee  
96 is no longer serving in an acting capacity.

97 ~~((4.))~~ d. In considering the confirmation of executive appointments to offices of  
98 management level responsibility, the council shall base its review on the ability of the  
99 appointee to meet the following criteria:

100 ~~((a.))~~ (1) a demonstrated reputation for integrity and professionalism;

101 ~~((b.))~~ (2) a commitment to and knowledge of the responsibilities of the office;

102 ~~((c.))~~ (3) a history of demonstrated leadership, experience and administrative  
103 ability;

104 ~~((d.))~~ (4) the ability to work effectively with the executive, the council, other  
105 management, public agencies, private organizations and citizens; and

106 ~~((e.))~~ (5) a demonstrated sensitivity to and knowledge of the particular needs  
107 and problems of minorities and women.

108           ~~((5-))~~ e. The appointee, before review of the appointment by the council, shall  
109 submit to the chair of the council:

110           ~~((a-))~~ (1) a full and complete resume of his or her employment history, to  
111 include references attesting to the stated employment experiences; and

112           ~~((b-))~~ (2) a signed statement acknowledging that the council's confirmation  
113 process may require the submittal of additional information relating to the background  
114 and expertise of the appointee.

115           ~~((6-))~~ f. Upon receipt of an executive appointment, the chair or his or her  
116 delegate, subject to the council's rules of procedure, shall notify council members of the  
117 appointment and attempt to allow a minimum of one work week for individual members  
118 to submit written questions to the reviewing committee.

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

123           SECTION 3. Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130 are  
124 each hereby amended to read as follows:

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

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

130           1. Working in partnership with communities and other funders to develop,  
131 support and provide human services which emphasize prevention, early intervention, and  
132 community education, and which strengthen individuals, families and communities in  
133 King County;

134           2. Managing programs which increase family self-sufficiency, enhance youth  
135 resiliency, reduce community violence and strengthen communities. The division shall  
136 also manage programs which address housing and community development needs, and  
137 help implement improvements identified in subarea and neighborhood plans for low and  
138 moderate income communities and population. Such programs are to include, but not be  
139 limited to, providing employment and training for youth and adults and providing  
140 assistance to indigent veterans and their families as authorized by chapters 41.02 and  
141 73.08 RCW. This division shall administer the county's federal housing and community  
142 development funds and other housing and community development programs; ~~((and))~~

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

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

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

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

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

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

155           4. Selecting appropriate agencies for the provision of mental health services  
156 developing, implementing and monitoring the provision and outcomes of contracted  
157 services;

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

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

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

168           D. The duties of the office of public defense (~~(division)~~) shall include those  
169 duties specified in K.C.C. chapter 2.60.

170           E. The duties of the developmental disabilities division shall include the  
171 following:

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

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

177           SECTION 4. Ordinance 383, Section 2, as amended, and K.C.C. 2.60.020 are  
178 each hereby amended to read as follows:

179           There is hereby established within the department of community and human  
180 services the office of ~~((the)) public ((defender))~~ defense. A director of the office of public  
181 ~~((defender))~~ defense shall be appointed by the ~~((director of the department of community~~  
182 ~~and human services))~~ county executive and approved by the county council. ~~((To assist the~~  
183 ~~director in the selection of a public defender, there shall be convened an advisory~~  
184 ~~committee, which shall be))~~ The county executive shall consult with representatives of the  
185 criminal justice system and the broader community during the recruitment and selection of  
186 the appointee.

187           SECTION 5. Ordinance 14412, Section 2, and K.C.C. 2.60.025 are each hereby  
188 repealed.

189           SECTION 6. Ordinance 14412, Section 3, and K.C.C. 2.60.027 are each hereby  
190 amended to read as follows:

191           The duties of the director of the office of public ~~((defender))~~ defense shall include  
192 the following:

193           A. Manage the office of ~~((the)) public ((defender))~~ defense;

194           B. Ensure the office of public defense employs the needed technical and public  
195 defense expertise to ensure effective delivery of public defense services;

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

198 ((C.)) D. Develop appropriate standards and guidelines for the qualification and  
199 experience level of attorneys and paraprofessionals."

200

201 **EFFECT:**

- 202 1. Provides for the Executive to appoint the director of the division. Though OPD would  
203 remain as a division within DCHS, the director would be appointed by the Executive.  
204 Currently, the director of DCHS appoints the leader of the division.
- 205 2. Changes the name of the division from the "Office of the Public Defender" to the  
206 "Office of Public Defense" and the leader of the division from "the public defender"  
207 to a "director of the Office of Public Defense".
- 208 3. The director of the Office Public Defense will be appointed by the Executive and  
209 confirmed by the Council. The Executive is directed to consult with representatives of  
210 the criminal justice and broader community during the recruitment and selection of  
211 the appointee, rather than convening an advisory committee to assist the director of  
212 DCHS in the appointment.
- 213 4. Amends and establishes the duties of the director of Public Defense, adding the  
214 following, "ensure the office of public defense employs the needed technical and  
215 public defense expertise to ensure effective delivery of public defense services".
- 216 5. Corrects various K.C.C. sections to reflect the revised name of the division, and  
217 revised title of the leader of the division.

09-13-11



Sponsor: Ferguson

Proposed No.: 2010-0580

1 **TITLE AMENDMENT TO PROPOSED ORDINANCE 2010-0580, VERSION 1**

2 On page 1, beginning on line 1, strike everything through page 1, line 9, and insert:

3 "AN ORDINANCE relating to the office of the public  
4 defender; making technical corrections; amending  
5 Ordinance 11955, Section 12, as amended, and K.C.C.  
6 12.16.100, Ordinance 11955, Section 13, as amended, and  
7 K.C.C. 2.16.110, Ordinance 11955, Section 6, as amended,  
8 and K.C.C. 2.16.130, Ordinance 383, Section 2, as  
9 amended, and K.C.C. 2.60.020 and Ordinance 14412,  
10 Section 3, and K.C.C. 2.60.027 and repealing Ordinance  
11 14412, Section 2, and K.C.C. 2.60.025."

12 **EFFECT:** Amends the title to reflect Striking Amendment S1.

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**Comparison of Legislative Requirements for Office of Public Defense and The Public Defender**

	<b>1970 Ordinance # 383</b>	<b>1987 Ordinance # 8257</b>	<b>2002 Ordinance # 14412</b>	<b>2011 Proposed No. 2010-0580, Version 1 <b>S3</b></b>
<b>Name of Office</b>	Office of Public Defense	Public Defense Program	Office of the Public Defender	Office of Public Defense
<b>Title of Position</b>	Administrator of the Office of Public Defense	Administrator of the Public Defense Program	Public Defender	Director of the Office of Public Defense
<b>Appointed By</b>	County Executive	Department of Human Resources Director	Department of Community and Human Services (DCHS) Director	County Executive
	Selection Advisory Committee consisting of: <ul style="list-style-type: none"> <li>• President of the Seattle-King County Bar association</li> <li>• Chairman of the Criminal Law Section of the Seattle-King County Bar Association</li> <li>• President of the Urban League</li> <li>• Representative from the Law and Justice Task Force for the Seattle Model Cities Program</li> </ul>	Advisory Committee representative of the criminal justice system and the broader community	Advisory committee representative of the criminal justice system and broader community. The DCHS director shall appoint the public defender from a list of three names submitted by the advisory committee.	Consultation with representatives of the criminal justice system and the broader community during the recruitment and selection of the appointee.
<b>Council Role</b>	Approve	Approve	Confirmation	Confirmation
<b>Director Qualifications</b>			2.60.025 Public defender – established. The public defender shall be a licensed attorney with prior experience in public defense and management.	
<b>Director Duties</b>	Section 3. The duties of the Administrator duties shall be: <ol style="list-style-type: none"> <li>1. To establish a list of lawyers who wish to participate in the defense of indigent defendants; such list to be known as the assigned counsel list. The Administrator shall assign cases to members of the assigned</li> </ol>		2.60.027 – duties. The duties of the public defender shall include the following: <ol style="list-style-type: none"> <li>A. Manage the office of the public defender;</li> <li>B. Represent the department in all city, county, state and federal forums</li> </ol>	Duties shall include those duties specified in K.C.C., Chapter 2.60.  The duties of the director of the office of public defense shall include the following: <ol style="list-style-type: none"> <li>A. Manage the office of public</li> </ol>

	<p align="center"><b>1970 Ordinance # 383</b></p>	<p align="center"><b>1987 Ordinance # 8257</b></p>	<p align="center"><b>2002 Ordinance # 14412</b></p>	<p align="center"><b>2011 Proposed No. 2010-0580, Version 1 <b>S3</b></b></p>
	<p>counsel list on a case by case basis. As much as feasible, the assignment from the assigned counsel list shall be not less than twenty percent nor more than forty percent of the eligible defendants arraigned in the Superior Court of King County, exclusive of juvenile proceedings.</p> <ol style="list-style-type: none"> <li>2. To investigate and determine who shall be eligible to receive legal services from the Office of Public Defense.</li> <li>3. To investigate and report on any complaint of a recipient of service against the lawyer(s) representing him. The Administrator shall submit his findings of the investigation to the complainant, the lawyer complained against, and the presiding judge of the King County Superior Court.</li> <li>4. To make periodic evaluations, at least annually, of the services rendered through the office of Public Defense submitting such report to the judges of the King County Superior Court, the King County Council and the King County Executive.</li> <li>5. To investigate the financial condition of the parents of any juvenile in Juvenile Court receiving legal representation through the Office of Public Defense and to recommend to the Juvenile Court a sum to be charged to parents to pay for such representation.</li> <li>6. To make such rules, not in conflict with this ordinance, that may be necessary and appropriate for the discharge of the duties and responsibilities of the Office of Public Defense.</li> </ol>		<p>where the defense perspective is required; and</p> <p>C. Develop appropriate standards and guidelines for the qualification and experience level of attorneys and paraprofessionals.</p>	<p>defense;</p> <ol style="list-style-type: none"> <li>B. Ensure the office of public defense employs the needed technical and public defense expertise to ensure effective delivery of public defense services;</li> <li>C. Represent the department in all city, county, state and federal forums where the defense perspective is required; and</li> <li>D. Develop appropriate standards and guidelines for the qualification and experience level of attorneys and paraprofessionals.</li> </ol>

**King County****Law, Justice, Health and Human Services Committee****STAFF REPORT**

<b>Agenda Item:</b>	7	<b>Name:</b>	Polly St. John
<b>Proposed No.:</b>	2010-0580	<b>Date:</b>	February 2, 2011
<b>Invited:</b>	Rhonda Berry, Assistant Deputy County Executive Gail Stone, Law and Justice Policy Advisor, Executive Office Jackie MacLean, Director, Department of Community and Human Services David Hocraffer, The Public Defender Krista Camenzind, Budget Supervisor, Office of Management and Budget Andrew Bauck, Budget Analyst, OMB		

**SUBJECT**

AN ORDINANCE that would change the reporting relationship for the Office of the Public Defender to report directly to the County Executive, instead of the director of the Department of Community and Human Services.

**SUMMARY**

This is the first hearing on Proposed Ordinance 2010-0580. This staff report will provide a brief overview of the Office of the Public Defender (OPD) and the proposed changes to the current reporting structure called for by the proposed ordinance.

**BACKGROUND**

Public defense services are mandated by the U.S. Constitution, the Washington State Constitution and other state statutes. In Washington State, the cost of providing indigent<sup>1</sup> defense services is primarily the responsibility of local governments – counties and cities. As a regional government, King County is responsible for providing indigent defense services for felony and juvenile defendants on a county-wide basis, and as the local government, the county must provide defense services for misdemeanants in the unincorporated area. (Cities are responsible for providing defense services for misdemeanors that occur within their borders.)

King County Code 2.60.101 states that indigent defense services will be made available to provide legal representation for those that are eligible. Washington State law, RCW 10.101, defines who is indigent. In general, OPD provides attorneys to those people

<sup>1</sup> RCW 10.101.010(1) defines “indigent” as including those who are receiving public assistance, involuntarily committed to a mental health facility, or near the federally established poverty level; and those who are unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

who qualify based upon their financial status and are facing the possibility of jail time or of losing their children.

Unlike most jurisdictions in the nation, King County has contracted with non-profit agencies for indigent legal defense services for over 30 years. OPD negotiates the contracts for defense services with the non-profit organizations and assigns cases to the defender agencies<sup>2</sup>. These annual contracts are subject to approval by the County Council. The defender firms are (1) the Associated Counsel for the Accused (ACA), (2) the Northwest Defenders Association (NDA), (3) the Society of Counsel Representing Accused Persons (SCRAP), and (4) The Defender Association (TDA). Under these defender agency contracts, the county pays for "caseload" on a workload basis (using increments called "case credits" which represent the number of attorneys and other resources, such as expert witnesses and investigators that are allocated to each case).

Finally, OPD is responsible for preparing an annual budget for the county's public defense program. The primary cost driver is caseload, which is controlled by the number of arrests and case filings. Approximately 70 percent of the annual budget pays for defense services. The remaining 30 percent of the OPD budget is programmed for administration and overhead, expert witnesses and assigned counsel costs.

Organizationally, the Office of Public Defense is under the administrative control of the county's Department of Community and Human Services (DCHS) and is headed by an attorney with prior public defense and management experience.

### **PROPOSED REORGANIZATION**

OPD is one of four divisions within DCHS<sup>3</sup>. Proposed Ordinance 2010-0580 would change direct reporting and oversight of the office from the Director of DCHS to the County Executive. The new structure is similar to that of the Office of Information Resources Management.

The legislative statement of intent contained in the proposed ordinance preamble is to "facilitate effective collaboration and planning throughout the county's criminal justice [CJ] system", to "provide for an accountable and transparent system that will encourage service delivery comparable to other county criminal justice providers", and "to enhance performance of the office".

### **Facilitate Effective Collaboration and Planning Throughout the County CJ System**

As noted in the background section, OPD contracts for defense services with non-profit agencies. OPD was originally located in DCHS because the agency is responsible for negotiating and implementing many county service delivery contracts and because many other DCHS services, such as treatment and housing, are also provided to indigent populations. However, the DCHS mission to help the needy achieve and

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<sup>2</sup> OPD is also responsible for maintaining a list of lawyers available to handle cases that agencies cannot accept due to a conflict of interest. This list of independent contract attorneys is known as the Assigned Counsel Panel.

<sup>3</sup> The other divisions are (1) Community Services, (2) Mental Health, Chemical Abuse & Dependency Services, and (3) Developmental Disabilities.

maintain healthier lives is different from the OPD defense services that more closely align with other criminal justice agencies.

OPD is an integral part of the criminal justice delivery system. By locating OPD as a division within another department, the office does not appear to be on the same level as other criminal justice providers, which include the Superior Court, District Court, Department of Adult and Juvenile Detention (DAJD), and the Prosecuting Attorney's Office (PAO). Because these agencies interact regularly and policy decisions in one area can easily impact another, it is important to ensure that OPD is perceived to have an equal position when working with the others. By taking OPD out of DCHS and thereby creating a different reporting structure for OPD, the public defense part of the criminal justice system may become as "visible" as the other participants.

Additionally, the head of each of the other criminal justice agencies is a separately elected official (with the exception of Adult & Juvenile Detention which is run by a director that answers directly to the County Executive). Adoption of this ordinance would make the position of the Public Defender more high-profile and co-equal with the Director of Adult and Juvenile Detention.

#### **Provide for an Accountable and Transparent System**

Currently, OPD is budgeted as a separate appropriation unit. This allows for budget transparency and accountability. However, under the current reporting structure the Public Defender is accountable to the Department Director. The proposed ordinance would give reporting and direct oversight responsibility to the Executive, eliminating a management level (reporting to the DCHS Director), and making the Public Defender directly accountable to the Executive. *Executive staff are currently working to evaluate potential operational effects upon both OPD and the Executive offices.*

#### **Enhance Performance of the Office**

The proposed change in reporting could emphasize OPD performance because the office would appear at a higher reporting level. All performance standards, costs and policy decisions would receive direct review by the Executive rather than a department director who then shares information with the Executive. However, this new direct reporting relationship would be a change in past practices. County agencies that directly report to the Executive, such as OIRM, represent groups that provide internal services to other county organizations. Although all Executive departments report to the Executive, the department directors are responsible for direct oversight of their agencies. OPD provides direct services through its contracts with defense agency providers. This change in reporting structure is currently under review to determine the impacts of the proposed change upon the Executive. *Executive staff are currently working to evaluate possible operational effects upon both OPD and the Executive offices.*

#### **Next Steps**

The Executive and OPD are evaluating the operational and fiscal effects of the proposal.

Executive staff have noted that the Executive in his March 1, 2010 transmittal letter to Council for approval of the 2010-11 public defense contracts, expressed his commitment to quality public defense services that ensure equal access to justice for all county residents and the effective and efficient operation of the county's criminal justice system.

On August 24, 2010 in Briefing 2010-B0157, the Council was provided an overview of the Executive's Case Weighting Study (CWS) Implementation Plan, dated June 30, 2010. The Executive's plan highlighted some of the considerations that arise due to the differential organizational structure of OPD relative to the PAO and other elected criminal justice agencies. The CWS report stated that: *"[r]espondents from various courts and areas of expertise agreed that the position of OPD within the criminal justice system is structurally difficult. OPD is not managed by a separately elected official and answers to the Department of Community and Human Services rather than directly to the County Executive, as does the PAO<sup>4</sup>. This [management structure] puts OPD at a disadvantage relative to the PAO. Because it is not separately elected, the role of OPD within the system in terms of budget and political persuasion, as well as a forceful advocate for defense concerns is more limited."*

To address these considerations, the plan identified actions to increase collaboration and communication among the Executive Office, OPD, the separately elected CJ agencies and the Council. The stated Implementation Plan action was to establish a schedule of regular meetings between the Office of the Executive, OPD, the defense agency contractors and, when appropriate, the Office of Management and Budget (OMB).

Executive staff report that they have been actively working to carry out the plan and to identify further mechanisms and options for increasing direct communication between the Executive's Office and OPD. Further, Executive staff are currently analyzing the operational and fiscal impacts of Proposed Ordinance 2011-0012. They further report that the Executive looks forward to working with the Council on this issue. *The committee may wish to request a timeline and/or a discussion process for a joint Council and Executive response to the proposed legislation.*

#### **AMENDMENT:**

A technical amendment is needed to reflect changes to K.C.C.2.16.025 that were adopted by the Council in Ordinance 16960. That ordinance changed the management structure for the budget office. These changes would correctly identify the new Office of Performance, Strategy and Budget. Proposed Ordinance 2010-0580 would amend the same section of King County Code. The County's Code Reviser has developed an amendment to reflect the needed changes in **Attachment 1**.

#### **ATTACHMENTS**

1. Striking Amendment to Proposed Ordinance 2010-0580
2. Proposed Ordinance 2010-0580

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<sup>4</sup> The PAO is a separately elected official that does not report directly to the Executive. Also, OPD reports to the Executive through the director of DCHS; although the reporting relationship is not directly between the Public Defender and the Executive.