



King County

Committee of the Whole

STAFF REPORT

Agenda Item:	5-11	Name:	Patrick Hamacher, Amy Tsai, Nick Wagner
Proposed No.:	2013-0108 to 0109, 2013-0210 to 0212, 2013-0215 to 0216	Date:	May 1, 2013
Invited:	<ul style="list-style-type: none"> • Dave Chapman, Director, Office of Public Defense • Dwight Dively, Director, Office of Performance, Strategy and Budget (PSB) • Susan Slonecker, Senior Prosecuting Attorney, Prosecuting Attorney's Office • Patti Cole-Tindall, Labor Relations Director, Office of Labor Relations 		

SUBJECT

Ordinances regarding the reorganization of the Office of Public Defense (2013-0108), supplemental request for funding (2013-0109), charter amendments for the selection of the chief Public Defender (2013-0210 to 0212), an interim plan (2013-0215), and supplemental request for funding the interim plan (2013-0216).

SUMMARY

As a result of the Dolan lawsuit, the County Executive has proposed changes to the structure for county public defense services. Currently, the County contracts with four non-profit public defense organizations. The Executive's proposal would create a new County Department of Public Defense.

Proposed Ordinance **2013-0108** would create the Department of Public Defense and the Public Defense Advisory Board. Proposed Ordinance **2013-0109** would provide a supplemental appropriation of \$4.9 million (net \$3.1 million) to various capital projects and operating budgets to effectuate the transition to a new model for provision of public defense services.

Proposed Ordinances **2013-0210 through 2013-0212** present three alternatives for the selection process of the chief Public Defender.

Proposed Ordinance **2013-0215** would create an interim structure for public defense until a final structure can be decided upon and put into place. Proposed Ordinance **2013-2016** is a supplemental request for the costs of implementing the interim structure.

BACKGROUND

The following background is a condensed summary of the background on indigent defense, the Dolan lawsuit, and the proposed ordinances from previous staff reports in this Committee.

Lawsuit Drives Public Defense Changes

Today, King County contracts with four private, nonprofit corporations for the provision of most public defense services. In January 2006, a class action lawsuit was filed against King County, alleging that the employees of these agencies were county employees and that King County had a duty to enroll them in the Public Employees' Retirement System (PERS). In a ruling upheld by the Washington State Supreme Court, the trial court held that the nonprofits were "arms and agencies" of King County, making the employees of those nonprofits employees of King County for purposes of PERS enrollment.

In April 2012, King County began making employer contributions to PERS for those employees and the employees' PERS contributions have been deducted from the salaries paid to them by each public defender organization. In March 2013, the Council approved a settlement agreement between King County and the Plaintiffs which must now go through a judicial approval process before it can become effective. The settlement agreement would recognize the plaintiffs as county employees on July 1, 2013, with full benefits, but leaves up to King County how public defense would be structured.

Pending and Related Legislation

PO 2013-0108 (Public Defense Department) – In response to the Court ruling and settlement, the County Executive has proposed the creation of a Department of Public Defense with two major Divisions, one that would handle the bulk of cases and calendar assignments and another that would primarily handle conflict cases. PO 2013-0108 would also establish a Public Defense Advisory Board to make recommendations to the department director on department policies, operations and matters of budget. The advisory board would issue biannual reports, including a review of the Executive's proposed annual public defense budget.

PO 2013-0109 (Supplemental) – There is a supplemental budget request for transition costs to effectuate the proposed public defense model. PO 2013-0109 would provide a supplemental appropriation of \$4.9 million from the General Fund, with a net cost of \$3.1 million after removing the double-counting of an internal transfer from the General Fund to some of the projects.

Motion 13886 (Transition Plan) – Adopted April 8, 2013, Motion 13886 requested that the Executive transmit legislation to the County Council to cover the transition from the current model to a new public defense structure.

PO 2013-0210, -0211, -0212 (Charter Amendments) – Three ordinances were introduced on April 18 that are alternative forms of a charter amendment that would create a Department of Public Defense within the executive branch and a process for selecting a County Public Defender to head the department. The amendments differ primarily in the method of selecting the County Public Defender: appointment by a Public Defense Oversight Commission (2013-0210), election by county voters (2013-0211), or appointment by the Executive, subject to confirmation by the Council (2013-0212).

PO 2013-0215 (Interim Ordinance) – In response to Motion 13886, on April 25, 2013, the Executive transmitted an interim structure for public defense. This proposal would create a new department of public defense with four divisions, which would be in place until such time as the Council decides on a new public defense structure and that structure is implemented.

PO 2013-0216 (Interim Supplemental) – There is a supplemental budget request with a net impact of \$2.3M that reflects costs related to establishing an interim structure.

ANALYSIS

This is the fifth hearing on the proposed ordinances for public defense. On March 20, 2013, Council staff identified six main areas of analysis that will be fleshed out over the course of several Committee of the Whole briefings. Those areas include:

- 1) Alternatives – Are there alternative models that should be considered?
- 2) Timeframe – Is the timeframe for migration reasonable?
- 3) Independence – Does the proposed model adequately address the issue of independence of the public defense system?
- 4) Conflicts – Is the proposed model sufficient to handle case conflicts?
- 5) Annualized budget – Is the proposed departmental budget and FTE request reasonable? (Particularly given the unknown status of outside contracts)
- 6) One-time budget – Are the supplemental requests for one-time costs reasonable?

Previous staff reports have discussed alternatives, independence, and conflicts in some detail. This staff report covers the following topics:

- 1) Executive's interim proposal for migration (PO 2013-0215)
- 2) One-time budget requests pertaining to the interim proposal (PO 2013-0216)
- 3) Conflicts
- 4) Charter amendments (PO 2013-0210 to 0212) and proposed striking amendment S1.

PO 2013-0215 OPD Interim Ordinance

On April 8, 2013, the Council adopted Motion 13886 (see Attachment 18), which requested that the Executive transmit legislation to the County Council to cover the transition from the current model to a new public defense structure. The motion expressed the Council's commitment to a thoughtful process to ensure that the new model that was selected would be consistent with best practices. The motion also recognized that implementing the new structure would take time, and that the county would need an interim structure on July 1 to ensure uninterrupted delivery to indigent public defense clients of their constitutionally-guaranteed right to assistance of counsel.

On April 25, the Executive transmitted a proposal for an interim public defense structure (PO 2013-0215, "interim ordinance") and a supplemental budget request reflecting transition cost estimates (PO 2013-0216, "interim supplemental").

There are two main elements to the interim proposal. First, the ordinance establishes a four-division interim department of public defense. This structure would be in place until such time as the Council passes and the county implements a new final public defense structure. Steps would be taken insofar as they are necessary to implement the interim solution; hence there is an adjusted supplemental request that is lower than the original supplemental request. Second, the ordinance includes a list of the actions that remain to be resolved in order for the interim structure to be successfully implemented on July. **The proposed ordinance is an emergency ordinance and would take effect immediately upon Council adoption.**

Interim Structure

The interim ordinance provides for the following:

- Removes the Office of Public Defense from under the Department of Community and Human Services (DCHS) and creates a new Department of Public Defense.

Under each of the main alternatives presently being considered by the Council (in-house, public corporation, and public defender district), there would be a public defender department with a Chief Defender, with duties depending upon the structure selected. Creating an interim department that is separate from DCHS puts the department closer on par to the Prosecuting Attorney's Office and adds a layer of independence by not having the Chief Defender report to the director of DCHS.

- The department should have four divisions.

The proposed interim structure envisions that the employees on July 1 would remain in their current locations with a division structure that matches the four non-profit defender agencies. This structural similarity promotes continuity in services by avoiding disruptions and complications that could arise if offices and equipment were moved or groups of employees were merged into fewer divisions. As discussed in the unresolved

issues section below, the ability to implement this plan would require agency cooperation.

- Duties of the department include the direct provision of public defense services. The director of the department manages the department, ensures employment of sufficient staff to effectively deliver public defense services, and is guided by the ABA principles for standards for a public defense system.

With the recognition of defender agency employees as county employees on July 1, the current model must change. As a result, the county will need to provide public defense services until such time as a final structure is selected by the Council and implemented.

Note that OPD is presently engaged in discussions with SCRAP about having the county continue the ROYAL project with DCHS after July 1 until at least the end of the year. SCRAP expressed strong interest in this possible interim solution. In order for the department to be able to perform this function, the interim ordinance should authorize social justice work as a duty of the department. This could be done via an amendment either at Committee or at Council.

- The current director of OPD is the interim director of the department.

The interim director for the department would be the current OPD director, who is David Chapman. The interim director could continue to serve in that position indefinitely at the will of the Executive, presumably until a new public defense structure was selected by the Council. The interim director would be eligible to apply for the director position of the department, which, unless the Council's final defense structure provided for a different structure or selection process, would be done by Executive appointment subject to confirmation by the Council.

- The Council requests the Executive to negotiate any agreements necessary to implement the Dolan settlement. Unresolved issues that may require agreements are listed by example in Attachment 1 to the proposed ordinance.

As has been mentioned in previous staff reports, many issues remain to be resolved before July 1 in order to have a smooth transition of public defense services. Examples are listed in Attachment 1 to the proposed ordinance and are discussed in the next section of the staff report below. This provision in the proposed ordinance recognizes that the Executive may need to negotiate agreements in seeking resolution of these issues. As noted in the Findings, the County recognizes the value of the expertise and contribution of the defender agencies and the need to work with them collaboratively to achieve the mutually desired goal of continuing to provide quality service to public defense clients.

- Conflicts that cannot be resolved in-house will be sent to an assigned counsel panel. The department shall also develop a conflicts policy to determine when a conflict exists.

The proposed ordinance continues the current practice of assigning unresolvable conflicts to an assigned counsel panel of private attorneys. It also requires a conflicts policy. OPD is currently working with a workgroup that includes representatives from the defender agencies and private counsel to develop the conflicts policy.

- The department may enter into agreements to provide services to the state of Washington, tribal governments and municipalities in King County on a full cost recovery basis, subject to Council approval when required.

The proposed ordinance provides that the department can enter into agreements to provide services to other entities, including the ones with which the public defense agencies presently have contracts, so long as there is full cost recovery. Full cost recovery ensures that the General Fund does not subsidize work done for non-King County entities.

Staff have analyzed the components of the interim proposal and concluded that the terms appear to be reasonably constructed to include those elements required for creation of an interim in-house employee structure while leaving the door open for alternative models should the Council choose to adopt a different final structure. This is further supported by the reduction in the supplemental request to reflect the interim period, as discussed in the supplemental section below.

Remaining Actions to Resolve

The interim ordinance (PO 2013-0215) identifies transition items that the current Office of Public Defense (OPD) must address with the four private, nonprofit public defender agencies in order to bring the non-profit employees on board as county employees on July 1 and ensure uninterrupted public defense services.

These transition items include 1) wrapping up existing contracts, 2) office logistics, 3) administrative processes, and 4) determining the status of non-county activities currently performed by the non-profit agencies. The full list of transition items is included in Attachment A to PO 2013-0215.

Issue 1: Resolution of existing case contracts

- Contractual prepayment of open cases – on track pending ability to take the open cases back from agencies

The contracts with the non-profit agencies for public defense work expire on June 30, 2013. The county prepays agencies for assigned cases. For cases that are prepaid but not completed by the end of the contract period, the contract specifies how to calculate the leftover amount of prepayment owed to the county. Recovering unspent prepayments for existing case contracts appears to be progressing on schedule. There are contractual methods for calculating repayment of prepaid cases back to the county. The county needs to verify that the non-profit agencies have sufficient funds to make the repayments (currently estimated to be about \$2 million), reach agreement on the

amount of the repayments using the contract methodology, and accomplish collection of the amounts from the agencies. **Recapturing prepayments of existing case contracts assumes that the defender agencies will turn over open cases to the county on July 1; this is an assumption that may not be fully resolved yet.**

- Completion of contract reconciliation for case services – on track

There is also a quarterly reconciliation process to true up monthly payments with actual caseloads. This year, caseloads are below projections and the current estimate is for approximately \$1 million to be returned by the non-profit agencies to the county.

Issue 2: Office logistics

OPD is making progress on office logistics required to implement an interim structure by July 1, but much work remains to be done prior to July 1 in configuring the new case management system and importing data into it, establishing the status of agency office equipment, and finalizing space planning and lease agreements. These are discussed further below.

- Case management system – data migration not started

The Executive's proposal would have the defender agency employees continue work on their existing cases in their current locations. New county employees would need access to their existing case files and a functional case management system (CMS).

OPD's goal is to have all data for open cases migrated into one vendor system to be ready to use by July 1. Toward that end, OPD and KCIT with the assistance of a consultant selected the software SCRAP uses, for the county's unified CMS. The system is an "off the shelf" system used nationwide for case management. The county has completed a contract with the vendor and is currently setting up the required servers to host the application and associated enterprise database. It has also made arrangements with SCRAP for assistance with data configuration and training of staff.

To complete the migration, all of the agencies will need to provide copies of their case management databases to the vendor, both for configuration as well as for using the new system. If they do not, then divisions who have not completed the migration process will need to operate parallel systems until the migration is complete. That would be less efficient, but will help ensure continuity of data.

To date, agencies have not yet completed a nondisclosure agreement with the vendor or provided the vendor a copy of their database. Agency directors raised questions about data confidentiality and who would pay for the system. OPD drafted an agreement at agency request on April 15 to reflect that King County would pay for data migration, the system and licenses, with provisions recognizing the protection of privileged data. Discussions between the agencies and OPD are continuing.

- Office equipment – negotiations requested

OPD requested information technology equipment and software inventory from all agencies. Most agency equipment appears to meet county standards (one agency submitted inventory data that was less usable). This information has informed the Executive's request for supplemental authority for interim equipment. However, after an adequate inventory has been conducted, the county will need to reach agreement with the agencies on use of the equipment. OPD has requested that discussion with the agencies but it has not yet occurred.

- Interim space planning – progress on most of the negotiations

The defender agencies currently occupy space around the King County Courthouse in downtown Seattle, the Maleng Regional Justice Center in Kent, and the Youth Services Center in First Hill. Their leases end at various times ranging from July 31, 2013 (ACA & SCRAP Kent leases) to January 1, 2022 (NDA downtown Seattle lease). County agencies including the Facilities Management Division have toured the facilities and are in negotiations with the agencies and landlords for county use of the current facilities beginning July 1. OPD expects to either reach satisfactory agreements with the defender agencies or have backup options prior to June 30. Staff analysis is continuing on the status of the backup options.

Tables 1 and 2 below show the distribution of space across defender agencies overall and by location. Failure of the County to achieve successful negotiations with any one agency would have the potential to affect up to a third of the total space presently occupied by the defender agencies. Therefore, until the County achieves satisfactory office space arrangements with the agencies, finding space alternatives should be a high priority to prevent the interruption of client services.

Table 1. Overview of Defender Agency Space Usage

Agency	Staff*	Staff %	% Space	Sq Ft.
ACA	112	31%	32%	40,466
TDA	105	30%	23%	28,785
SCRAP	77	22%	29%	36,772
NDA	61	17%	16%	20,651
Total	355	100%	100%	126,674

* from Oct 2012 pay list

Table 2. Defender Agency Space Usage by Location

Agency	Downtown Seattle	First Hill	Kent	Total
ACA	29,696 (41%)		10,770 (44%)	40,466 (32%)
TDA	21,526 (30%)	4,429 (15%)	2,830 (12%)	28,785 (23%)
SCRAP		26,002 (85%)	10,770 (44%)	36,772 (29%)
NDA	20,651 (29%)			20,651 (16%)
Total	71,873 (100%)	30,431 (100%)	24,370 (100%)	126,674 (100%)

Issue 3: Administrative processes

The county is on track with its internal timelines for setting up internal payroll and benefits systems and other internal processes for bringing non-profit agency employees on board by July 1 such as creating access cards and preparing new employee orientation and PeopleSoft training. A lot of this work is occurring in the Finance and Business Operations Division and Human Resources Division. This aspect was previously discussed in the April 3 staff report, and the county appears to continue to be on target. Administrative aspects that require working with the agencies are still in beginning stages as discussed further below.

- Communication protocols and resources – negotiations not started

OPD presently plans to keep in place each agency's attorney and staff communication protocols until the Council decides on a final public defense structure. OPD also plans to have employees continue to use their current communications equipment (phones, mobiles, etc.). These steps require reaching an agreement with the agencies. Discussions have not yet begun on these issues.

- Employee administrative services – county work on track, agency negotiations not started

Although the Finance and Business Operations Division is working on payroll for after July 1, the defender agencies need to be able to complete their final payroll through June 30, process final payments on the county contracts, and pursuant to the settlement arrange for employees to cash out their current vacation time with an opportunity to repurchase some or all of it with King County. This work needs to be done in coordination with the agencies. Discussions have not yet begun on these issues.

Issue 4: The future of non-county activities

- Status of non-County contracts – contracts with full cost recovery can continue

OPD is in discussions with the state for the Sexually Violent Predator contract, and believes it will be able to continue providing the service on a full cost recovery basis. This is dependent on the agencies who currently hold the contracts not creating an issue with transitioning the contracts to the county.

There have been fewer discussions with the City of Seattle for misdemeanor services, but OPD hopes to be able to take on the contract with full cost recovery. The ability to do so will be impacted by the wages of the attorneys performing that body of work to the extent that the wages are higher than what the agencies were paying. Wages are a subject of bargaining and have not been fully resolved, although agency employees have been provided with the county scale for equivalent positions. Again, the ability of the county to take on the contract is dependent on both cost and willingness of the agencies holding the contracts to transition the contracts to the county.

There have been no discussions with the tribes for continuation of tribal contracts. The work is minimal and would be permitted under the proposed interim ordinance if full cost recovery can be achieved.

- Status of social justice programs – analysis is continuing for permanent long-term solutions

The 2013 SCRAP contract with the Department of Community and Health Services runs through June 30, 2013, but DCHS has funds set aside (\$147,050) to support the project for the remainder of the year. OPD believes it will be able to take on this contract for the remainder of 2013. That will provide transition time to examine alternatives.

It is unknown at this time what will happen to the Racial Disparity Project. It is housed within TDA and whether TDA employees will choose to convert to county employment is unknown at this time. As discussed in the April 17 staff report, its funding would likely be compromised if converted to a county program. Becoming a county program, or continuing to exist in a non-profit agency whose role no longer includes providing public defense services to the county, are both options which would likely impact the program's efficacy.

Council staff have been directed to examine options for preserving these programs long-term in whatever final public defense structure is chosen. Staff will continue to analyze options as decisions on the final public defense structure are narrowed.

PO 2013-0216 OPD Interim Supplemental

There is a proposed interim supplemental budget ordinance that would change the Office of Public Defense appropriation to the Department of Public Defense appropriation. It would provide a supplemental appropriation of \$4 million from the General Fund (at a net cost of \$2.3 million after removing the double-counting of an internal transfer from the General Fund to the capital projects).

It includes the following appropriations:

- \$41,481,187 and 19.75 FTE which is the OPD 2013 adopted budget
- \$496,000 to the department for onboarding personnel, supplies, and contingency (transmitted as \$490,000 that will need a technical amendment)
- 355 additional FTE to cover the migration of defender agency employees to the county
- \$1,529,000 in King County Information Technology capital projects for computers and the case management system, and
- \$250,000 in Building Repair and Replacement capital projects for facilities planning and tenant improvement contingency.

This supplemental request is \$882,000 less than the supplemental request accompanying the original public defense proposal (PO 2013-0208 and -0209), because it is based on amounts deemed necessary for implementation of the interim solution only. **Further supplemental requests would be expected depending on the**

final public defense structure approved by the Council. The table below compares the original supplemental request (PO 2013-0209) to the proposed interim supplemental request (PO 2013-0216).

Table 3. Comparison of Original Supplemental to Interim Supplemental

	2013-0209 Original	2013-0216 Interim	Difference
Personnel onboarding	\$499,000	\$442,000	(\$57,000)
Supplies	\$124,000	\$54,000	(\$70,000)
Vehicle purchase	\$755,000	\$0	(\$755,000)
Computers	\$780,000	\$780,000	\$0
Case Management System	\$749,000	\$749,000	\$0
Facilities planning	\$100,000	\$100,000	\$0
Tenant improvements	\$150,000	\$150,000	\$0
Total	\$3,157,000	\$2,275,000	(\$882,000)
FTEs	275	355	80

The original supplemental request was described in detail in the March 20 staff report. This staff report describes the items with no change compared to the 2013-0209 supplemental and then discusses the supplemental requests that show a decrease.

Requests with \$0 change

Computers – The \$780,000 amount for computers and technology staff time assumes that roughly a third of the existing machines, or 100, would need to be replaced in 2013. Although OPD and KCIT continue to refine their analysis of the technology need, as discussed above the County has not yet reached agreement with the defender agencies on use of equipment in the defender agency offices. Therefore, it appears reasonable not to adjust the estimate at this time. Future adjustments to this request may be needed as more information becomes known.

Case Management System – The \$749,000 request for the case management system (CMS) funds staff time to gather requirements, select an interim solution, pay for licenses, data migration and training. Consolidating case management between the four defender agencies onto one system is an efficiency that OPD believes will help reduce the number of cases being re-referred due to conflicts. Investing in a unified system for the County appears reasonable regardless of the final structure of public defense selected by the Council.

Facilities – Long term planning (\$100,000) is an activity that will be needed if the Council decides to provide public defense services in-house. Otherwise, funding for this planning could be delayed. However, the status of using the current leased spaces is not completely certain, and office placement of staff is critical to their ability to continue to handle their caseloads. Long-term planning may also serve an additional function of helping the County to analyze its near-term options. Therefore, leaving a budget for future space planning appears reasonable.

There is also a \$150,000 request for tenant improvements to make any needed modifications to existing space. The Facilities Management Division is in the process of surveying the sites and still believes these improvements may be necessary. Partially, the need will depend upon the future status of non-county contracts and of the non-profits themselves, and whether separate space in the existing offices will need to be created to split County employees from defender agency staff. Work on tenant improvements would be approved by OPD and the Office of Performance, Management and Budget prior to expenditure.

Requests less than Original Supplemental

Fleet – The largest reduction occurs with the elimination of the request for fleet acquisition. The fleet acquisition was premised upon adoption of an in-house public defense structure. OPD can reimburse investigators and social workers for mileage in the same manner as defender agencies currently do. Therefore, until the final structure of public defense is adopted by the Council, it is not necessary nor advisable to commit to a large fleet acquisition at this time. However, if the Council were to adopt an in-house model, then this amount would be included in a future supplemental request.

Personnel and Supplies – There is a 20 percent reduction in the request for personnel and supplies (including an 11 percent reduction in personnel onboarding costs and a reduction in over half of the supply costs). This reduction includes eliminating two months of salary for the two division directors that were originally proposed to be hired in the May to June timeframe. It also reduces supply costs to emergency equipment, ORCA card expenses, and other supplies viewed as necessary for the interim. If the Council were to adopt an in-house model, there could be an additional request for supplies included in a future supplemental request.

FTEs

The supplemental request includes authorization for 355 FTEs to hire all of the staff currently employed at the defender agencies (plus two positions as described below). The original supplemental request for 275 FTEs included 272 new defense employees and three unfunded positions for flexibility in attorney needs; it did not include FTEs for defender agency staff performing non-county contract work (Seattle Municipal Court and Sexually Violent Predator contracts). This revised FTE allocation eliminates the three unfunded positions and provides the ability for the County to accept as many employees on July 1 as choose to join the County system. The final FTE count could be adjusted to match actuals at a later date.

The April 3 staff report identified 4 TLTs and 2 FTEs that have been brought on board to perform current work that is needed to prepare for the July 1 transition. The hiring of the four TLTs (communications, labor negotiations and two project managers) was accomplished within existing OPD appropriation authority. There were two FTEs hired including clerical payroll staff and a human resources associate. *Note that the 355 FTE request is intended by OPD to include these two FTEs.*

The proposed supplemental appears to support reasonably necessary elements of an interim county public defense system such as working towards a unified case management system and removing proposals for expenditures with more permanent impacts such as fleet acquisitions.

Conflicts

Rules of Professional Conduct

The Washington State Bar Association defines conflicts of interest in the Rules of Professional Conduct (RPC). RPC Rule 1.7, regarding conflicts of interest for current clients, states that a lawyer shall not represent a client if the representation of one client will be directly adverse to another client, or there is a significant risk that the representation will be materially limited by the lawyer's responsibilities to another client, former client, third person, or personal interest of the lawyer. However, the lawyer can represent such a client if he or she believes she can provide competent representation, the representation is not prohibited by law, the representation does not involve a claim by one client against the other represented by the lawyer in the same proceeding, and each client gives informed consent in writing.

RPC Rule 1.9, among other things, states that a lawyer who formerly represented a client cannot later represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client. It also requires that a lawyer not represent a person in a matter where the lawyer's former law firm had previously represented a client whose interests were materially adverse to that person and the lawyer acquired protected material information. However, in either of these circumstances, the former client can allow it by giving informed consent in writing.

RPC Rule 1.10 is the general rule on imputation of conflicts of interest. Generally, under Rule 1.10, a lawyer in a firm cannot represent a client when any one of the attorneys in the firm would be prohibited from doing so under Rule 1.7 or 1.9, unless screens that meet requirements laid out in Rule 1.10(e) are put in place to prohibit dissemination of information about the former representation.

RPC Rule 1.11(d) addresses conflicts of interest for current government officers and employees. Among other things, such employees are subject to Rule 1.7 and 1.9 and may not participate in a matter in which the lawyer participated while in private practice unless the government agency gives informed consent in writing.

County Conflicts Policies

On April 24 the Committee received information in executive session regarding the ability of an in-house system to handle client case conflicts. In addition, the Committee was briefed on conflicts issues in the March 20 and April 17 staff reports.

PO 2013-0215, the proposed interim ordinance, adds the following conflicts language to the county code:

The department shall manage cases and assign counsel to avoid conflicts of interest, including but not limited to those that could arise from division-wide concurrent representation of more than one client involved in a single matter, such as co-defendants or defendant and a witness or suspect in the case or co-respondents or represented members of a family in a dependency case or a respondent and an adverse witness in a civil dependency case. If the department is unable to provide in-house representation when a conflict exists, it shall assign counsel from the assigned counsel panel. The department shall develop a policy to determine when a conflict exists and to avoid conflicting representation.

The policies that a public defense system adopts can have a significant impact on how many conflicts it determines to exist and how often it determines a case must be referred to another division, or failing ability to do that, to private outside counsel. OPD convened a workgroup in January of this year to develop a common conflicts policy and procedure. The workgroup consists of a private bar member and employees from each of the county's defender agencies. The conflicts policy is also being reviewed by Professor David Boerner from the Seattle University School of Law.

Ability of Two-Division Model to Handle Conflicts

As discussed in the April 17 staff report, OPD has proposed a two-division public defense structure, with the first division aiming to handle 60 percent of the caseload, the second division handling primarily conflicts from the first division at an estimated 30 percent of the cases, with the remaining 10 percent being referred to assigned counsel.

At this time, staff analysis is not able to conclude whether a two-division model is sufficient for handling case conflicts, or whether there is a more optimal number of divisions that will result in fewer cases being sent to assigned counsel, which cost more.

The number of cases referred to outside counsel has remained steadily in the 8 to 10 percent range across the four defender agencies over time. OPD believes that the 8 to 10 percent referral rate can be achieved in a two-division model. In support of that claim, OPD offers the following factors:

- A unified case management system will create efficiencies in conflicts identification and assignment compared to the current system in which each defender agency has its own case management system.
- A unified county policy on what situations qualify for conflicts reassignment will create efficiencies compared to each agency having its own conflicts policies. Situations that the County might not necessarily treat as a conflict may presently be treated by a defender agency as a conflict.
- Other jurisdictions across the country have been able to function with a two-division structure. (However, as noted in the April 24 staff report,

extrapolating from different jurisdictions to King County's situation is difficult when each jurisdiction has its own way of handling conflicts.)

- There are already fewer than four agency alternatives for handling certain types of cases, therefore making the conflict reassignment alternatives for those cases more analogous to the proposed two-division model. (However, as noted in the April 24 staff report, this situation does not apply to felonies, which have three to four agencies handling them. Since felonies tend to be the most expensive cases, the effect of this factor would be small.)

It is unknown whether these efficiencies will outweigh the added pressure on the system of reducing the number of available conflict buckets from four agencies down to two divisions. Staff have requested that OPD conduct additional conflicts projections from their database. Whether OPD will be able to provide useful information in the Council's timeframe for action that can better inform the Council's decision on a public defense structure is unclear because OPD does not have access to all of the agencies' conflicts data and must base its analysis on the reviews that are conducted within OPD's system. It is possible that legal review of OPD's conflicts policy will shed additional light on the efficacy of a two-division structure. If the Council adopts an in-house model as the final public defense structure, the number of divisions may need to be modified over time as implementation provides real data on ability of the system to handle conflicts.

Charter Amendments

The committee was briefed last week on three approaches to creating a Department of Public Defense by charter amendment. They differ primarily in the method by which the department head—the County Public Defender—would be selected:

- Appointment by a public defense oversight commission (P.O. 2013-0210);
- Election by county voters (P.O. 2013-0211); or
- Appointment by the executive, subject to confirmation by the Council (P.O. 2013-0212).

There have been some changes since last week in the proposed amendments and in the draft ordinances that would implement them. The description below and the attached flow charts (Attachments 12-14) and summaries (Attachments 15-17) have been modified to reflect the changes.

1. The Commission Appointment amendment (2013-0210) provides for the County Public Defender to be appointed by a Public Defense Oversight Commission, the members of which would be appointed by the County Council. The Council would prescribe the membership of the oversight committee by ordinance. The composition of the commission and the method of appointing commission members has been revised since last week. The revised implementing ordinance would consist of nine members, with one member representing each of the following:

- a. The Washington Association of Criminal Defense Lawyers;
- b. The Washington State Office of Public Defense;
- c. The Washington State Bar Association;
- d. The King County Bar Association;

- e. A nonpartisan organization active in King County that focuses on mental health issues, such as the King County Mental Health Advisory Board;
- f. A nonpartisan organization active in King County that focuses on substance abuse issues, such as the King County Alcoholism and Substance Abuse Administrative Board;
- g. A nonpartisan organization active in King County that focuses on issues concerning military veterans, such as the King County Veterans Program Advisory Board;
- h. A nonpartisan organization active in King County that focuses on issues related to poverty;
- i. A nonpartisan organization active in King County that focuses on issues concerning youth.

Each group would nominate a single representative, whom the Council would review and, if it found the nominee acceptable, approve. This is analogous to the process that the Council has adopted for appointments to the Citizens' Election Oversight Committee.

The Commission would appoint the County Public Defender to an initial term of four years, could reappoint for additional four-year terms, and could remove the County Public Defender for cause, which the Council could define by ordinance. Under the associated implementing ordinance in its current form, appointment and reappointment of the County Public Defender would require a simple majority of the commission members; removal would require a supermajority. *Note that legal counsel is researching whether there is any legal obstacle to assigning appointive and removal powers and an oversight role to the commission.*

2. The Election amendment (2013-0211), unchanged from last week, provides for the County Public Defender to be elected by county voters, just as the Prosecuting Attorney is elected. Unlike the other two amendments, this amendment includes no provision for a group to oversee or advise the Department of Public Defense, since there is no corresponding group that oversees or advises the Prosecuting Attorney's Office. Removal of an elected County Public Defender would require the same grounds and procedures as for removal of the Prosecuting Attorney (or any other county elected official), which include removal by recall election.

3. The Executive Appointment amendment (2013-0212) provides for the County Public Defender to be appointed by the County Executive, subject to confirmation by the Council; however, the Executive would be required to make the appointment from among three candidates recommended by a Public Defense Advisory Committee. Under the associated implementing ordinance in its current form, the advisory committee would have the same membership and be appointed in the same manner as the Public Defense Oversight Committee that would be created by the Commission Appointment charter amendment. *Note that legal counsel is researching whether there is any legal obstacle to assigning this role to the advisory board.*

The Executive would appoint the County Public Defender to an initial term of four years and could reappoint for additional four-year terms, again subject to confirmation by the Council; however, the Executive would not be authorized to remove the County Public Defender. Only the Council would be authorized to do so, only for cause (which the Council could define by ordinance), and only by the affirmative votes of at least six Councilmembers.

Besides nominating candidates for appointment as County Public Defender, the Public Defense Advisory Committee would oversee the Department of Public Defense. This oversight role is intended to be analogous to the oversight role played by the Citizens' Election Oversight Committee. This oversight role was included in the original version of the Executive Appointment amendment, but was not called out in last week's staff report. The term "oversight" presumably would be defined in the implementing ordinance; its scope would require legal review on the permissible oversight duties of the committee versus the oversight obligations of the Council.

All three charter amendments provide that to be eligible for appointment or election, the County Public Defender must be admitted to practice law in Washington and have at least ten years of experience as an attorney primarily practicing criminal defense. All of the charter amendments would permit the Council to establish additional qualifications by ordinance for the County Public Defender.

All of the amendments would make the County Public Defender the county's bargaining agent for collective bargaining with the employees of the Department of Public Defense concerning working conditions other than compensation and benefits, which would be bargained by the Executive. This division of bargaining authority would be similar to the division of authority between the Executive and the Sheriff.

AMENDMENTS

Staff are preparing two technical amendments for Committee consideration, including the following:

PO 2013-0215 Interim Ordinance – A proposed technical amendment is being prepared that would correct duplicative language, clarify the appointment process for the interim director, and add social justice program work to the authorized duties of the interim department.

PO 2013-0216 Interim Supplemental – A proposed technical amendment is being prepared that would correct typos in the ordinance and in the Attachment A General Government CIP.

There may be additional refinements to the language of the proposed charter amendments or implementing ordinances as staff receive further direction.

NEXT STEPS

The Chair noted at the April 24 meeting the possibility of action at the May 15 meeting. Therefore, the next staff report will include a high level summary of issues discussed to date, as well as wrap up discussion of remaining issues from previous staff reports.

If a charter amendment is acted upon (2013-0210 to 0212), there would be an accompanying ordinance containing details of implementation. The implementing ordinances accompanying 2013-0210, 0211, and 0212 are being developed by staff.

ATTACHMENTS

1. Proposed Ordinance 2013-0108 (Department of Public Defense)
2. Proposed Ordinance 2013-0109 (Supplemental)
3. Transmittal letter
4. Fiscal notes
5. Proposed Ordinance 2013-0210 (Charter Amendment Commission)
6. Proposed Ordinance 2013-0211 (Charter Amendment Election)
7. Proposed Ordinance 2013-0212 (Charter Amendment Advisory Commission)
8. Proposed Ordinance 2013-0215 (Interim Ordinance)
9. Proposed Ordinance 2013-0216 (Interim Supplemental)
10. Transmittal letter for 2013-0215 and 0216
11. Fiscal notes for 2013-0215 and 0216, revised
12. Flowchart PO 2013-0210 (Commission)
13. Flowchart PO 2013-0211 (Election)
14. Flowchart PO 2013-0212 (Advisory)
15. Summary PO 2013-0210 (Commission)
16. Summary PO 2013-0211 (Election)
17. Summary PO 2013-0212 (Advisory)
18. Motion 13886 (Interim Plan)



KING COUNTY

Attachment 1

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

April 30, 2013

Ordinance

Proposed No. 2013-0108.1

Sponsors Patterson

1 AN ORDINANCE approving the organization and operations
2 of the department of public defense within the executive
3 branch with a department of public defense advisory board to
4 support the director of the department of public defense and the
5 independence of the legal practice of public defense; amending
6 Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130,
7 Ordinance 8257, Section 2, as amended, and K.C.C. 2.60.020,
8 Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054,
9 adding a new section to K.C.C. Title 4A, adding a new section
10 to K.C.C. chapter 2.60 and repealing Ordinance 8257, Section
11 6, and K.C.C. 2.60.070.

12 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

13 SECTION 1. Ordinance 11955, Section 6, as amended, and K.C.C. 2.16.130 are
14 each hereby amended to read as follows:

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

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

20 1. Working in partnership with communities and other funders to develop,
21 support and provide human services which emphasize prevention, early intervention, and
22 community education, and which strengthen individuals, families and communities in
23 King County;

24 2. Managing programs which increase family self-sufficiency, enhance youth
25 resiliency, reduce community violence and strengthen communities. The division shall
26 also manage programs which address housing and community development needs, and
27 help implement improvements identified in subarea and neighborhood plans for low and
28 moderate income communities and population. Such programs are to include, but not be
29 limited to, providing employment and training for youth and adults and providing
30 assistance to indigent veterans and their families as authorized by chapters 41.02 and
31 73.08 RCW. This division shall administer the county's federal housing and community
32 development funds and other housing and community development programs;

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

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

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

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

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

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

45 4. Selecting appropriate agencies for the provision of mental health services
46 developing, implementing and monitoring the provision and outcomes of contracted
47 services;

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

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

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

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

60 E.)) The duties of the developmental disabilities division shall include the
61 following:

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

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

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

69 A. There is hereby established (~~(within the department of community and human~~
70 ~~services the))~~ a department of public defense within the executive branch. The duties of
71 the department of public defense shall include:

72 1. Provide publicly financed legal defense services constitutionally required to
73 the indigent and the near indigent person in all matters when there may be some factual
74 likelihood that a person may be deprived of their liberty under the laws of the state of
75 Washington or King County, including, but not limited to, a violation of any law of the
76 state of Washington or ordinance of King County, juvenile and dependency matters,
77 mental illness and similar commitment proceedings, revocations and habeas corpus
78 proceedings when they arise in King County;

79 2. Provide such legal defense services available in an efficient manner that
80 assures adequate representation at reasonable cost to the county;

81 3. Investigate and determine eligibility for publically financed legal defense
82 services. Indigent determination is controlled by RCW 10.101 et al. In addition, the
83 department of public defense shall secure reimbursement from eligible persons, including
84 the parents of juveniles represented by attorneys assigned by the department of public
85 defense, where such persons can afford to pay some or all of the cost to King County of
86 providing them such legal defense services;

87 4. Assign cases to one of the two divisions of the department staffed by
88 attorneys who shall represent the highest percentage possible of all caseloads with
89 unavoidable conflicts of interest in complex cases that may involve multiple defendants
90 or multiple charges or other special circumstances being the cases receiving
91 representation by assigned counsel; and

92 5. Establish and maintain a list of department credentialed lawyers on an
93 assigned counsel panel who wish to participate in the defense of persons eligible under
94 the public defense program.

95 B. A ((public)) director of the ((office)) department of public defense shall be
96 appointed by the ((county)) executive and approved by the ((county)) council. The
97 ((county)) executive shall consult with county, state, and federal representatives of the
98 criminal justice system during the recruitment and selection of the appointee. The duties
99 of the director of the department of public defense shall include:

100 1. Manage the department of public defense;

101 2. Ensure the department of public defense employs the needed technical and
102 public defense expertise to ensure effective delivery of public defense services;

103 3. Represent the executive in all forums where the defense perspective is
104 required;

105 4. Ensure that the American Bar Association Ten Principles for a Public
106 Defense System guide the development, management and department standards for legal
107 defense representation;

108 5. Follow the Washington State Supreme Court Standards for Indigent Defense
109 in establishing caseload limits for attorneys;

110 6. Develop and maintain appropriate standards and guidelines for the
111 qualification and experience level of public defense attorneys and paraprofessionals;

112 7. Establish a reasonable fee for legal defense services, subject to the approval
113 of the court, made available, at a client's expense, to a person charged in King County
114 with a felony of public notoriety when the court finds that the defendant is unable to
115 employ adequate private counsel as a result of such public notoriety; and

116 8. Consult with a public defense advisory board and receive its
117 recommendations on department policies, operations, and matters of budget.

118 SECTION 3. There is hereby added to K.C.C. Title 4A a new section to read as
119 follows:

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

123 SECTION 4. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
124 each hereby amended to read as follows:

125 A. A defendant requesting counsel at public expense shall pay a processing fee of
126 twenty five dollars as reimbursement to ~~((King))~~ the ((C))county for the administrative
127 costs and expenses incurred in the processing of the application. The processing fees is
128 payable at the time the request for public counsel is made to the ~~office~~ department of
129 public defense. Processing fees are not refundable, even if the defendant is determined to
130 be not eligible for counsel at public expense. A defendant will not be denied counsel
131 because the defendant cannot pay the processing fee. All processing fee payments
132 received shall be credited to the county current expense fund.

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

142 C. The department of public defense may provide its services to other
143 municipalities in King County on a reimbursable basis and is authorized to negotiate
144 appropriate contractual agreements therefor.

145 SECTION 5. Ordinance 8257, Section 6, and K.C.C. 2.60.070 are each hereby
146 repealed.

147 NEW SECTION. SECTION 6. There is hereby added to K.C.C. chapter 2.60 a
148 new section to read as follows:

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

152 B. The board shall review the activities and plans of the department of public
153 defense and make recommendations to the director of public defense, and advise the
154 director on matters of concern to the practice of public defense in King County.

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

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

- 160 1. One member representing the Washington state Bar Association;
- 161 2. One member representing the King County Bar Association;
- 162 3. One member representing a minority bar association with representation
163 revolving among these groups each membership term;
- 164 4. One member shall be a judge retired from the King County superior or
165 district court;
- 166 5. One member from the faculty of a law school in Washington state; and
- 167 6. Two members shall be associated with community organizations that serve
168 the indigent population of King County.

169 E. Members of the board shall serve two-year terms and until their successors are
170 nominated and confirmed. Beginning in 2013, initial member representatives in
171 designated in subsection D.1, 3. and 5. of this section shall be appointed for one-year
172 terms, and member representatives designated in subsection D.2, 4. and 6. of this section
173 shall be appointed for two-year terms. The terms of designated representative members
174 shall coincide with the terms of the persons who are vacating those seats. Members of
175 the board shall not be compensated for the performance of their duties as members of the
176 board, but may be paid subsistence rates and mileage in the amounts consistent with
177 county policy.

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

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

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

188

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None



Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

April 30, 2013

Ordinance

Proposed No. 2013-0109.1

Sponsors Patterson

1 AN ORDINANCE making a net supplemental
2 appropriation of \$3,157,000 to various general fund
3 agencies and \$1,779,000 to various non-general fund
4 agencies and amending the 2013/2014 Biennial Budget
5 Ordinance, Ordinance 17476, Sections 43, 49, 49 and 63, as
6 amended, and Attachment B, as amended.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. From the general fund there is hereby appropriated a net total of
9 \$3,157,000 from various general fund agencies.

10 From various non-general funds there is hereby appropriated a net total of
11 \$1,779,000 from various non-general fund agencies, amending the 2013/2014 Biennial
12 Budget Ordinance, Ordinance 17476.

13 SECTION 2. Ordinance 17476, Section 43, as amended, is hereby amended by
14 adding thereto and inserting therein the following:

15 GENERAL GOVERNMENT GF TRANSFERS - From the general fund there is
16 hereby appropriated to

17 General government GF transfers \$1,779,000

18 SECTION 3. Ordinance 17476, Section 49 is hereby amended to read as follows:

42 structure for the council to review and approve or reject the proposal after study and a
43 public hearing.

44 Prior to submitting a proposal to reorganize or restructure the delivery of public
45 defense services, the council requests the executive to consult with interested parties,
46 including the current non-profit agencies providing public defense services, labor unions
47 representing employees of those agencies, bar leaders, and other governments currently
48 served by the same non-profit agencies that provide service to the county.

49 SECTION 4. Ordinance 17476, Section 49, as amended, is hereby amended by
50 adding thereto and inserting therein the following:

51 DEPARTMENT OF PUBLIC DEFENSE - From the general fund there is hereby
52 appropriated to:

53 Department of public defense \$1,378,000

54 The maximum number of additional FTEs for department of public defense

55 shall be: 275.00

56 SECTION 5. Ordinance 17476, Section 63, as amended, is hereby amended by
57 adding thereto and inserting therein the following:

58 CAPITAL IMPROVEMENT PROGRAM - From the several capital
59 improvement project funds there are hereby appropriated and authorized to be disbursed
60 the following amounts for the specific projects identified in Attachment A to this
61 ordinance.

62	Fund	Fund Name	2013
63	3771	KCIT CAPITAL PROJECTS	\$1,529,000
64	3951	BUILDING REPAIR AND REPLACEMENT	\$250,000

70 of the ordinance creating the department of public defense. (Proposed Ordinance 2013-
71 XXXX).
72

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. General government Capital Improvement Program

General Government Capital Improvement Program

ATTACHMENT A

Fund Title	Project	Project Name	2013	2014	2015	2016	2017	2018	Grand Total
3771/KCIT Capital Projects									
	1120359	KCIT/OPD	780,000						780,000
	1120358	KCIT/OPD	749,000						749,000
3771/KCIT Capital Projects			1,529,000						1,529,000
3951/Building Repair and Replacement									
	1120507	DES FMD OPD Transition	150,000						150,000
	1120508	DES FMD OPD Planning	100,000						100,000
3951/Building Repair and Replacement			250,000						250,000
Grand Total			1,779,000						1,779,000

February 15, 2013

The Honorable Larry Gossett
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Gossett:

This letter transmits a report in response to a proviso contained within the 2013/2014 Adopted Budget Ordinance 17476, Section 49, P1; an ordinance with proposed King County Code revisions; and a supplemental budget ordinance.

The proviso directs that:

“Should the executive wish to reorganize or restructure the delivery of public defense services, a proposal and rationale for restructuring, with background information, must be presented to the council with sufficient time in advance of the proposed effective date for the new structure for the council to review and approve or reject the proposal after study and a public hearing.”

The enclosed Creation of a County Public Defense Agency Proviso Response report includes a proposal and rationale for restructuring and provides information regarding outreach to key stakeholders. Three key elements provide the foundation of the restructure:

1. Creation of a new Executive branch department of public defense, reporting to the County Executive, which can increase the voice and role of public defense within the criminal justice system.
2. Creation of two separate legal services divisions within the new department to prevent conflicts of interest in complex cases that may involve multiple defendants or multiple charges or other special circumstances. The divisions will be staffed by attorneys who will represent the highest percentage possible of all caseloads with conflict cases receiving representation by assigned counsel.

3. Creation of a Public Defense Advisory Board to support the director of the Department of Public Defense and the independence of the legal practice of public defense within the Executive branch.

For nearly 40 years the County has provided public defenders for those accused of crimes but unable to pay an attorney. These defense attorneys and staff have earned King County a national reputation for excellence and we are proud of their work.

Historically, defense services have been contracted out to private, non-profit corporations. For the last seven years, King County has been defending a class action lawsuit on behalf of the employees of these private agencies seeking to obtain public retirement benefits. The state Supreme Court ruled that the defense firms had become, in its words, “arms and agencies” of the County, and that their employees were therefore public employees for the purposes of retirement benefits. In December 2012, King County and the attorneys representing the *Dolan* class reached agreement on a proposed settlement resolving these and related claims. The settlement must be approved by the King County Council and by Pierce County Superior Court Judge John R. Hickman. On January 14, 2013, I transmitted the *Dolan* settlement to the Council with my recommendation for approval.

Among other things, the settlement provides that all individuals who are employed by the public defense non-profit corporations on June 30, 2013 will be recognized as King County employees with full benefits starting July 1, 2013. These dates coincide with the date by which the current contracts with the public defense non-profit corporations expire. The proposed settlement leaves up to King County how this requirement of the proposed settlement will be implemented. After careful thought and analysis, I have determined that it is in the best interests of the public defense function, its clients and our King County employees to implement this provision of the settlement through creation of a County department of public defense. It is not tenable to have hundreds of County employees working for – and hired, trained, managed, disciplined, promoted and fired by – several private entities.

The enclosed report and King County Code amendments therefore propose a County public defense agency staffed by King County employees as the mechanism to implement the proposed settlement. The proposal is designed around the American Bar Association’s Ten Principles of a Public Defense Delivery System (see Attachment A) including the three principles below:):

1. Independence from political influence;
2. Support for a quality workforce and performance; and
3. Maximizing resources, value, and operational efficiency.

In developing this proposal, David Chapman, Director of the Office of Public Defense (OPD), led our efforts to gather stakeholder input on public defense models, principles, and operational issues. Initial outreach in December 2012 included the directors of the four private public defense organizations, public defense attorneys with the agencies and the assigned counsel panel, the affected union, and the courts. Outreach expanded in 2013 to include labor, bar leaders, other governments served by the public defense organizations that contract with King County, and counsel experienced with law firm mergers. Among the issues raised were concerns about independence, case conflicts, adequate client representation during the transition, and personnel issues.

I sincerely appreciate the time and effort stakeholders have spent providing their input. Their input has significantly enhanced the County's planning efforts as reflected in the attached proposals. While I am confident that this proposal will allow us to meet the basic requirements for providing public defense through a County department by July 1, our planning recognizes that certain components of this transition will take several months beyond that to fully implement.

The enclosed supplemental budget ordinance reflects the detailed operational planning done to date by County departments including human resources, facilities, and information technology. That planning work is continuing as we study current facility use and information technology systems. The current transition plan calls for attorneys and staff to remain in their current locations on July 1, 2013 and to transition to two divisions over time.

I have directed the OPD Director to continue to work with County staff, nonprofit agency management and staff, and external advisors to address concerns and plan a thoughtful transition to the new organizational structure.

The report and ordinances attached support the Justice and Safety Goal of the King County Strategic Plan to "Support safe communities and accessible justice systems for all," and specifically Strategy 2.a: "Ensure the availability of public defenders for those who need them." The proposal also supports the Financial Sustainability and Quality Workforce goals of the Strategic Plan.

I am proud to welcome public defenders as County employees. This is a new reality that requires a different model for the employees and for the County government. I know the Council shares my commitment that public defense in King County will continue to meet the highest standards of service and be delivered in a way that is client-centered, independent, and cost-effective. Thank you for your consideration of this important legislation.

If you have any questions, please contact David Chapman, Director, Office of Public Defense, at 206-263-2174.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
 ATTN: Michael Woywod, Chief of Staff
 Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief Advisor, Policy and Strategic Initiatives, King County
 Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Jackie MacLean, Director, Department of Community and Human Services (DCHS)
David Chapman, Director, Office of Public Defense, DCHS
The Honorable Dan Satterberg, Prosecuting Attorney
The Honorable Richard McDermott, Presiding Judge, Superior Court
The Honorable Corinna Harn, Presiding Judge, District Court

FISCAL NOTE

Attachment 4

Ordinance/Motion No. 00-
 Title: OPD Transition Supplemental Budget
 Affected Agency and/or Agencies: Office of Public Defense
 Note Prepared By: Krishna Duggirala
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be: 250,000

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
Building Repair & Replacement	3951	GF Transfer	250,000			
TOTAL						

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
Building Repair & Replacement	3951		250,000	0	0	0
TOTAL			250,000			

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
DES FMD OPD Planning/1120508	100,000	0	0	0
DES FMD OPT Transition/1120507	150,000	0	0	0
		0	0	0
TOTAL	250,000			

Footnotes:

Currently, the non-profit public defense organization have offices throughout King County. When the individuals in those organizations become County employees on July 1, 2013, they will remain in their current work locations. In the long-term, the various offices in downtown Seattle will need to be consolidated into one location. The OPD transition supplemental request includes \$100,000 to fund planning for the long-term relocation and consolidation of the Seattle offices (project 1120508). The state of the current leased space is not fully known to the County at this time and \$150,000 is requested as a contingency in case tenant improvements are needed in those spaces (Project 1120507). Such improvements might include up-grades for ADA compliance and/or the need to make physical barriers for people performing County vs. non-County work. Tenant Improvement funds will not be expended without prior approval by OPD and PSB.

FISCAL NOTE

Attachment 4

Ordinance/Motion No. 00-
Title: KCIT-OPD Network Improvements
Affected Agency and/or Agencies: Office of Public Defense
Note Prepared By: Junko Keesecker
Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD	3771	GF Transfer	780,000			
TOTAL						

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD/1120359	3771	N/A	780,000			
TOTAL						

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
56990 CIP Expenditures	780,000			
TOTAL				

Note

When the County begins providing public defense services directly on July 1, 2013, it is anticipated that some of the computers used by public defenders currently will need to be replaced. All of the computers, new or existing, will need to be configured to work on the County network and additional servers and network support may be needed. Because the County has limited knowledge of the existing computer inventory, this request assumes that 1/3 of the existing machines, roughly 100, will be replaced in 2013. The request also includes the staff time needed to configure all public defense computers for the County network, some network and server costs, and a 15% contingency. As more information about the computer inventory is learned, cost estimates will be adjusted.

FISCAL NOTE

Attachment 4

Ordinance/Motion No. 00-
 Title: KCIT-OPD Case Management Project
 Affected Agency and/or Agencies: Office of Public Defense
 Note Prepared By: Junko Keesecker
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD	3771	GF Transfer	749,000			
TOTAL			749,000			

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD/1120358	3771	N/A	749,000			
TOTAL			749,000			

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
56990 CIP Expenditures	749,000			
TOTAL	749,000			

Notes

Currently, each of the four non-profit public defense organizations operations its own case management system. When the County takes over direct management of defense cases on July 1, 2013, a single case management system will be needed. This request will fund requirements gathering, selection of one of the four existing systems as an interim system for all attorneys, license, data migration and training. Depending on the ability of the case management system selected as an interim solution to



KING COUNTY

Attachment 5

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

April 30, 2013

Ordinance

Proposed No. 2013-0210.1

Sponsors Patterson

1 AN ORDINANCE adding a new Section 350.20.60,
2 entitled "Department of Public Defense," to the King
3 County Charter, creating a department of public defense
4 and an appointed office with the title of "county public
5 defender"; adding a new Section 350.20.065 to the King
6 County Charter, creating a public defense oversight
7 commission; adding a new Section 899 to the King County
8 Charter, designating the county public defender as the
9 county's bargaining agent for all issues concerning
10 employees of the department of public defense except for
11 compensation and benefits; amending Section 350.20 of the
12 King County Charter; amending Section 890 of the King
13 County Charter; submitting the same to the voters of the
14 county for their ratification or rejection at the November
15 2013 general election; and requiring the county public
16 defender and the county executive to submit a joint
17 proposal to the council for legislation to facilitate
18 implementation of the collective bargaining provisions of
19 the charter amendment if it is approved by the voters.

20 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

21 SECTION 1. There shall be submitted to the qualified voters of King County for
22 their approval and ratification or rejection, at the next general election to be held in this
23 county occurring more than forty-five days after the enactment of this ordinance, an
24 amendment to the King County Charter, amending Section 350.20 of the King County
25 Charter, adding a new Section 350.20.60 and a new Section 350.20.65 to the King
26 County Charter, amending Section 890 of the King County Charter and adding a new
27 Section 899 to the King County Charter, as set forth below:

28 **Section 350.20 Executive Departments**

29 The executive departments shall consist of the department of assessments, the
30 department of judicial administration, the department of elections, the department of
31 public defense and those agencies of the executive branch which are primarily engaged in
32 the execution and enforcement of ordinances and statutes concerning the public peace,
33 health and safety and which furnish or provide governmental services directly to or for
34 the residents of the county.

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

36 The department of public defense shall be administered by the county public
37 defender, who shall perform the indigent public defense duties specified by general law,
38 including the federal and state constitutions, and shall be overseen by the public defense
39 oversight commission. The department of public defense shall be subject to the career
40 service personnel system and shall utilize the services of the administrative offices and
41 the executive departments, but it shall not be abolished or have its duties, as established
42 in this section, decreased by the county council or the county executive. The

43 responsibilities of the department of public defense shall include providing legal counsel
44 and representation to indigent individuals in legal proceedings, including those in the
45 superior and district courts for King County and in appeals from those courts, to the
46 extent required under the sixth amendment to the United States Constitution or Article I,
47 Section 22, of the Constitution of the state of Washington.

48 The county public defender shall administer the department of public defense.
49 The county public defender shall be appointed by the public defense oversight
50 commission to a term of four years, unless removed earlier by the commission. The
51 commission may reappoint the county public defender to additional four-year terms. To
52 be eligible for appointment or reappointment, the county public defender must be
53 admitted to practice law in the state of Washington and have at least ten years of
54 experience as a practicing attorney specializing in criminal defense. The county council
55 may establish by ordinance additional qualifications for the county public defender. The
56 county public defender shall receive compensation as provided by ordinance.

57 **Section 350.20.65. Public Defense Oversight Commission.**

58 The public defense oversight commission shall appoint the county public
59 defender, both initially and to fill any vacancy in the office, and shall oversee the
60 department of public defense. The commission may reappoint the county public defender
61 to additional four-year terms. The commission may remove the county public defender
62 during his or her term of office only for cause, which the county council may define by
63 ordinance. Appointment and reappointment of the county public defender shall require
64 the affirmative votes of at least four members of the commission. Removal shall require

65 five affirmative votes. The commission's duties, membership, process and qualifications
66 for appointment, rules and procedures shall be prescribed by ordinance.

67 **Section 890. Employee Representation.**

68 The county council may enact an ordinance providing for collective bargaining by
69 the county with county employees covered by the personnel system. If an ordinance
70 providing for collective bargaining is enacted, it shall not be subject to the veto power of
71 the county executive; and, except with respect to bargaining by the county with
72 employees of the department of public safety pursuant to Section 898 of this charter and
73 with the employees of the department of public defense pursuant to Section 1030 of this
74 charter, it shall designate the county executive as the bargaining agent of the county.

75 Any agreement reached as a result of negotiations by the county bargaining agent with
76 county employees shall not have the force of law unless enacted by ordinance.

77 **Section 899. Collective Bargaining for the Department of Public Defense.**

78 The county council may enact an ordinance providing for collective bargaining by
79 the county with employees of the department of public defense. The county executive
80 shall not have veto power over this ordinance. If such an ordinance is enacted, it shall
81 designate the county public defender as the bargaining agent of the county on all matters
82 concerning employees of the department of public defense except for compensation and
83 benefits, which shall be negotiated by the county executive as provided in Section 890 of
84 this charter. Any agreement reached as a result of negotiations by the county public
85 defender or the county executive with employees of the department of public defense
86 shall not have the force of law unless enacted by ordinance.

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

90 Shall the King County Charter be amended to create an appointed office of
91 county public defender, a department of public defense, and a public
92 defense oversight commission, and designate the county public defender
93 as the county's bargaining agent for all issues concerning employees of the
94 department of public defense except for compensation and benefits, which
95 would continue to be bargained by the county executive?

96 SECTION 3. Within ninety days after the county public defender takes office
97 pursuant to the charter amendment in section 1 of this ordinance, the county executive
98 and the county public defender shall submit to the county council a joint proposal for
99 legislation establishing a process of consultation and collaboration between the executive
100 and the public defender in advance of collective bargaining negotiations concerning
101 employees of the department of public defense. The process shall be designed to
102 promote successful implementation of the charter amendment by identifying and
103 resolving any disagreements between the executive and the public defender concerning
104 the division of bargaining authority, the positions to be taken on issues expected to arise
105 during collective bargaining or other matters that have the potential to interfere with
106 collective bargaining. The process shall provide that the executive and the public
107 defender shall promptly submit a confidential, detailed, written report to the chair of the
108 county council and the chair of the council's labor policy committee describing any such
109 disagreement that the executive and the public defender are unable to resolve. The

110 process shall further provide that neither the executive nor the public defender shall
111 propose or agree to the inclusion of language in any collective bargaining agreement
112 concerning employees of the department of public defense without conferring with one
113 another.
114

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None



KING COUNTY

Attachment 6

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

April 30, 2013

Ordinance

Proposed No. 2013-0211.1

Sponsors Patterson

1 AN ORDINANCE adding a new Section 350.20.60,
2 entitled "Department of Public Defense," to the King
3 County Charter, creating a department of public defense
4 and an elective office with the title of "county public
5 defender"; adding a new Section 899 to the King County
6 Charter, designating the county public defender as the
7 county's bargaining agent for all issues concerning
8 employees of the department of public defense except for
9 compensation and benefits; amending Section 350.20 of the
10 King County Charter; amending Section 680.10 of the King
11 County Charter; amending Section 890 of the King County
12 Charter; submitting the same to the voters of the county for
13 their ratification or rejection at the November 2013 general
14 election; and requiring the county public defender and the
15 county executive to submit a joint proposal to the council
16 for legislation to facilitate implementation of the collective
17 bargaining provisions of the charter amendment if it is
18 approved by the voters.

19 **BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:**

20 SECTION 1. There shall be submitted to the qualified voters of King County for
21 their approval and ratification or rejection, at the next general election to be held in this
22 county occurring more than forty-five days after the enactment of this ordinance, an
23 amendment to the King County Charter, amending section 350.20 of the King County
24 Charter, adding a new section 350.20.60 to the King County Charter, amending section
25 680.10 of the King County Charter, amending section 890 of the King County Charter
26 and adding a new Article 10, including new sections 1010, 1020, and 1030, to the King
27 County Charter, as set forth below:

28 **Section 350.20. Executive Departments.**

29 The executive departments shall consist of the department of assessments, the
30 department of judicial administration, the department of elections, the department of
31 public defense and those agencies of the executive branch which are primarily engaged in
32 the execution and enforcement of ordinances and statutes concerning the public peace,
33 health and safety and which furnish or provide governmental services directly to or for
34 the residents of the county.

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

36 The department of public defense shall be administered by the county public
37 defender, who shall perform the indigent public defense duties specified by general law,
38 including the federal and state constitutions. The department of public defense shall be
39 subject to the career service personnel system and shall utilize the services of the
40 administrative offices and the executive departments, but it shall not be abolished or have
41 its duties, as established in this section, decreased by the county council or the county
42 executive. The responsibilities of the department of public defense shall include

43 providing legal counsel and representation to indigent individuals in legal proceedings,
44 including those in the superior and district courts for King County and in appeals from
45 those courts, to the extent required under the sixth amendment to the United States
46 Constitution or Article I, Section 22, of the Constitution of the state of Washington.

47 **Section 649. County Public Defender, Term of Office and Compensation.**

48 The county public defender shall be elected as a nonpartisan office by the voters
49 of the county. The first election for county public defender shall be the general election in
50 2014, and the person elected shall take office on January 1, 2014. The term of office of
51 the first elected county public defender shall end on December 31, 2018. Subsequent
52 elections of the county public defender shall occur at the general election in 2018 and
53 every four years thereafter. To be eligible for election, the county public defender must
54 be admitted to practice law in the state of Washington and have at least ten years of
55 experience as an attorney practicing primarily criminal defense. The county council may
56 establish by ordinance additional qualifications for the county public defender. The
57 county public defender shall receive compensation as provided by ordinance.

58 **Section 680.10. Designation, Appointment and Election to Fill Vacancy.**

59 Immediately upon commencing their terms of office, the county executive, county
60 assessor, county director of elections (~~and~~), county sheriff and county public defender
61 shall each designate one or more employees who serve as a deputy or assistant in such
62 office to serve as an interim official in the event of a vacancy in the elective office of the
63 county executive, county assessor, county director of elections (~~or~~), county sheriff or
64 county public defender, respectively.

65 Except for a designation made by the metropolitan county council, a designation
66 of an interim official shall only be effective if the county executive, county assessor,
67 county director of elections ~~((and))~~, county sheriff and county public defender, each for
68 his or her elective office~~((;))~~; complies with the following procedure; commits the
69 designation to writing; identifies the order of precedence if more than one county officer
70 or employee is designated; signs the written designation; has the written designation
71 notarized; files the written designation with the county office responsible for records; and
72 provides a copy of the written designation to the chair of the metropolitan county council.
73 The county executive, county assessor, county director of elections ~~((and))~~, county sheriff
74 and county public defender may, at any time, amend such designation by complying with
75 the same procedure established for making the designation.

76 In the event the county executive, county assessor, county director of elections
77 ~~((or))~~, county sheriff or county public defender neglects or fails to make such a
78 designation within seven calendar days of commencing his or her term of office, the
79 metropolitan county council may by ordinance designate one or more employees who
80 serve as a deputy or assistant in such office to serve as an interim official in the event of a
81 vacancy in the elective office of the county executive, county assessor, county director of
82 elections ~~((or))~~, county sheriff or county public defender, respectively. A designation
83 made by the metropolitan county council shall be effective upon adoption of the
84 ordinance therefor and may be amended by ordinance; provided that a designation by the
85 county executive, county assessor, county director of elections ~~((or))~~, county sheriff or
86 county public defender which occurs subsequent to the adoption of an ordinance shall
87 take precedence over the designation by ordinance.

88 The designated county officer or employee shall immediately upon the occurrence
89 of a vacancy serve as the interim official and shall exercise all the powers and duties of
90 the office granted by this charter and general law until an acting official is appointed as
91 provided in this section.

92 The metropolitan county council shall, after being (~~appraised~~) apprised of a
93 vacancy in the elective office of county executive, county assessor, county director of
94 elections (~~(or)~~)2 county sheriff or county public defender, fill the vacancy by the
95 appointment of an employee who served as a deputy or assistant in such office at the time
96 the vacancy occurred as an acting official to perform all necessary duties to continue
97 normal office operations. The acting official shall serve until the vacancy is filled by
98 appointment pursuant to general law for nonpartisan county elective offices.

99 A vacancy in an elective county office shall be filled at the next primary and
100 general elections which occur in the county; provided that an election to fill the vacancy
101 shall not be held if the successor to the vacated office will be elected at the next general
102 election as provided in Sections 640 and 645 of this charter. The term of office of an
103 officer who has been elected to fill a vacancy shall only be for the unexpired portion of
104 the term of the officer whose office has become vacant and shall commence as soon as he
105 or she is elected and qualified.

106 A majority of the county council may temporarily fill a vacancy by appointment
107 until the vacancy has been filled by election or the successor to the office has been
108 elected and qualified.

109 **Section 890. Employee Representation.**

110 The county council may enact an ordinance providing for collective bargaining by
111 the county with county employees covered by the personnel system. If an ordinance
112 providing for collective bargaining is enacted, it shall not be subject to the veto power of
113 the county executive; and, except with respect to bargaining by the county with
114 employees of the department of public safety pursuant to Section 898 of this charter and
115 with the employees of the department of public defense pursuant to Section 1020 of this
116 charter, it shall designate the county executive as the bargaining agent of the county. Any
117 agreement reached as a result of negotiations by the county bargaining agent with county
118 employees shall not have the force of law unless enacted by ordinance.

119 **Section 899. Collective Bargaining for the Department of Public Defense.**

120 The county council may enact an ordinance providing for collective
121 bargaining by the county with employees of the department of public defense.
122 The county executive shall not have veto power over this ordinance. If such an
123 ordinance is enacted, it shall designate the county public defender as the
124 bargaining agent of the county on all matters concerning employees of the
125 department of public defense except for compensation and benefits, which shall
126 be negotiated by the county executive as provided in Section 890 of this charter.
127 Any agreement reached as a result of negotiations by the county public defender
128 or the county executive with employees of the county public defender shall not
129 have the force of law unless enacted by ordinance.

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

133 Shall the King County Charter be amended to create an elective office of
134 county public defender and a department of public defense and designate
135 the county public defender as the county's bargaining agent for all issues
136 concerning employees of the department of public defense except for
137 compensation and benefits, which would continue to be bargained by the
138 county executive?

139 SECTION 3. Within ninety days after the county public defender takes office
140 pursuant to the charter amendment in section 1 of this ordinance, the county executive
141 and the county public defender shall submit to the county council a joint proposal for
142 legislation establishing a process of consultation and collaboration between the executive
143 and the public defender in advance of collective bargaining negotiations concerning
144 employees of the department of public defense. The process shall be designed to
145 promote successful implementation of the charter amendment by identifying and
146 resolving any disagreements between the executive and the public defender concerning
147 the division of bargaining authority, the positions to be taken on issues expected to arise
148 during collective bargaining or other matters that have the potential to interfere with
149 collective bargaining. The process shall provide that the executive and the public
150 defender shall promptly submit a confidential, detailed, written report to the chair of the
151 county council and the chair of the council's labor policy committee describing any such
152 disagreement that the executive and the public defender are unable to resolve. The
153 process shall further provide that neither the executive nor the public defender shall
154 propose or agree to the inclusion of language in any collective bargaining agreement

155 concerning employees of the department of public defense without conferring with one
156 another.
157

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None



KING COUNTY

Attachment 7

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

April 30, 2013

Ordinance

Proposed No. 2013-0212.1

Sponsors Patterson

1 AN ORDINANCE adding a new Section 350.20.60,
2 entitled "Department of Public Defense," to the King
3 County Charter, creating a department of public defense
4 and an appointed office with the title of "county public
5 defender"; adding a new Section 350.20.065 to the King
6 County Charter, creating a public defense advisory
7 committee; adding a new Section 899 to the King County
8 Charter, designating the county public defender as the
9 county's bargaining agent for all issues concerning
10 employees of the department of public defense except for
11 compensation and benefits; amending Section 350.20 of the
12 King County Charter; amending Section 890 of the King
13 County Charter; submitting the same to the voters of the
14 county for their ratification or rejection at the November
15 2013 general election; and requiring the county public
16 defender and the county executive to submit a joint
17 proposal to the council for legislation to facilitate
18 implementation of the collective bargaining provisions of
19 the charter amendment if it is approved by the voters.

20 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

21 SECTION 1. There shall be submitted to the qualified voters of King County for
22 their approval and ratification or rejection, at the next general election to be held in this
23 county occurring more than forty-five days after the enactment of this ordinance, an
24 amendment to the King County Charter, amending Section 350.20 of the King County
25 Charter, adding a new Section 350.20.60 and a new Section 350.20.65 to the King
26 County Charter, amending Section 890 of the King County Charter and adding a new
27 Section 899 to the King County Charter, as set forth below:

28 **Section 350.20. Executive Departments.**

29 The executive departments shall consist of the department of assessments, the
30 department of judicial administration, the department of elections, the department of
31 public defense and those agencies of the executive branch which are primarily engaged in
32 the execution and enforcement of ordinances and statutes concerning the public peace,
33 health and safety and which furnish or provide governmental services directly to or for
34 the residents of the county.

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

36 The department of public defense shall be administered by the county public
37 defender, who shall perform the indigent public defense duties specified by general law,
38 including the federal and state constitutions, and shall be overseen by the public defense
39 advisory committee. The department of public defense shall be subject to the career
40 service personnel system and shall utilize the services of the administrative offices and
41 the executive departments, but it shall not be abolished or have its duties, as established
42 in this section, decreased by the county council or the county executive. The

43 responsibilities of the department of public defense shall include providing legal counsel
44 and representation to indigent individuals in legal proceedings, including those in the
45 superior and district courts for King County and in appeals from those courts, to the
46 extent required under the sixth amendment to the United States Constitution or Article I,
47 Section 22, of the Constitution of the state of Washington.

48 The county public defender shall be appointed by the county executive, subject to
49 confirmation by the county council, to a term of four years, unless removed earlier by the
50 county council for cause, including but not limited to the grounds for vacancy for elective
51 office under Section 680 of this charter and such other grounds as the council may
52 prescribe by ordinance. The county executive shall appoint the county public defender
53 from among three candidates recommended by the public defense advisory committee.
54 The county executive may reappoint the county public defender to additional four-year
55 terms, subject to confirmation by the county council. To be eligible for appointment, the
56 county public defender must be admitted to practice law in the state of Washington and
57 have at least ten years of experience as an attorney primarily practicing criminal defense.
58 The county council may establish by ordinance additional qualifications for the county
59 public defender. Confirmation of the appointment and reappointment of the county
60 public defender shall require the affirmative votes of at least five members of the county
61 council. Removal shall require six affirmative votes. The county public defender shall
62 receive compensation as provided by ordinance.

63 **Section 350.65. Public Defense Advisory Committee.**

64 The public defense advisory committee shall oversee the department of public
65 defense and, in the event of a vacancy in the office of county public defender,

66 recommend three candidates from whom the county executive shall make an appointment
67 to fill the vacancy, subject to confirmation by the county council. The committee's
68 duties, membership, process and qualifications for appointment, rules and procedures,
69 shall be prescribed by ordinance.

70 **Section 890. Employee Representation.**

71 The county council may enact an ordinance providing for collective bargaining by
72 the county with county employees covered by the personnel system. If an ordinance
73 providing for collective bargaining is enacted, it shall not be subject to the veto power of
74 the county executive; and, except with respect to bargaining by the county with
75 employees of the department of public safety pursuant to Section 898 of this charter and
76 with the employees of the department of public defense pursuant to Section 899 of this
77 charter, it shall designate the county executive as the bargaining agent of the county.
78 Any agreement reached as a result of negotiations by the county bargaining agent with
79 county employees shall not have the force of law unless enacted by ordinance.

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

81 The county council may enact an ordinance providing for collective bargaining by
82 the county with employees of the department of public defense. The county executive
83 shall not have veto power over this ordinance. If such an ordinance is enacted, it shall
84 designate the county public defender as the bargaining agent of the county on all matters
85 concerning employees of the department of public defense except for compensation and
86 benefits, which shall be negotiated by the county executive as provided in Section 890 of
87 this charter. Any agreement reached as a result of negotiations by the county public

88 defender or the county executive with employees of the department of public defense
89 shall not have the force of law unless enacted by ordinance.

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

93 Shall the King County Charter be amended to create an appointed office of
94 county public defender, a department of public defense, and a public
95 defense advisory committee, and designate the county public defender as
96 the county's bargaining agent for all issues concerning employees of the
97 department of public defense except for compensation and benefits, which
98 would continue to be bargained by the county executive?

99 SECTION 3. Within ninety days after the county public defender takes office
100 pursuant to the charter amendment in section 1 of this ordinance, the county executive
101 and the county public defender shall submit to the county council a joint proposal for
102 legislation establishing a process of consultation and collaboration between the executive
103 and the public defender in advance of collective bargaining negotiations concerning
104 employees of the department of public defense. The process shall be designed to
105 promote successful implementation of the charter amendment by identifying and
106 resolving any disagreements between the executive and the public defender concerning
107 the division of bargaining authority, the positions to be taken on issues expected to arise
108 during collective bargaining or other matters that have the potential to interfere with
109 collective bargaining. The process shall provide that the executive and the public
110 defender shall promptly submit a confidential, detailed, written report to the chair of the

111 county council and the chair of the council's labor policy committee describing any such
 112 disagreement that the executive and the public defender are unable to resolve. The
 113 process shall further provide that neither the executive nor the public defender shall
 114 propose or agree to the inclusion of language in any collective bargaining agreement
 115 concerning employees of the department of public defense without conferring with one
 116 another.
 117

KING COUNTY COUNCIL
 KING COUNTY, WASHINGTON

 Larry Gossett, Chair

ATTEST:

 Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

 Dow Constantine, County Executive

Attachments: None



KING COUNTY

Attachment 8

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

April 30, 2013

Ordinance

Proposed No. 2013-0215.1

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 11955,
5 Section 13, as amended, and K.C.C. 2.16.110 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, decodifying K.C.C. 2.60.010 and repealing
9 Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027,
10 Ordinance 383, Section 6, as amended, and K.C.C. 2.60.060
11 and Ordinance 8257, Section 6, and K.C.C. 2.60.070 and
12 declaring an emergency.

13 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

14 SECTION 1. Findings:

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

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

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

25 D. In January 2006, a class action lawsuit was filed against King County,
26 alleging that the employees of the private, nonprofit corporations were county employees
27 and that King County had a duty to enroll them in the Public Employees' Retirement
28 System (PERS).

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

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

35 G. In March 2012, the trial court entered an order requiring King County to
36 enroll the then-current employees of the private, nonprofit corporations in the Public
37 Employees' Retirement System, which the county did.

38 H. On March 18, 2013, the King County council adopted Ordinance 17537
39 approving a proposed settlement agreement that would recognize the current employees
40 of the private, nonprofit corporations as county employees on July 1, 2013. As of the
41 effective date of this ordinance, that settlement is still subject to and awaiting final and
42 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 during the transition to a new management
51 structure that achieves the county's goals for public defense.

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

55 L. The proposed class action settlement calls for the county to recognize the
56 employees who are working for the public defense contractors as of June 30, 2013 as
57 King County employees with full benefits for their positions on July 1, 2013 ("the
58 recognition date"). To meet the recognition date obligation and to provide a structure to
59 administer the public defense program, which shall be an executive department with
60 divisions until such time that the council directs implementation of an alternative
61 structure, enactment of this ordinance as an emergency ordinance is necessary.

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

64 A. The department of community and human services is responsible to manage
65 and be fiscally accountable for the community services division, mental health, chemical

66 abuse and dependency services division(~~(, the office of public defense)~~) and the
67 developmental disabilities division.

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

69 1. Working in partnership with communities and other funders to develop,
70 support and provide human services which emphasize prevention, early intervention and
71 community education, and which strengthen individuals, families and communities in
72 King County;

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

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

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

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

- 88 1. Managing and operating a system of mental health services for acutely
89 disturbed, seriously disturbed and chronically mentally ill children and adults;
- 90 2. Managing and operating a twenty-four-hour crisis response system, including
91 civil commitment as a last resort;
- 92 3. Providing treatment and rehabilitation service for alcoholism and for other
93 drug addictions under federal and state laws and King County ordinances;
- 94 4. Selecting appropriate agencies for the provision of mental health services
95 developing, implementing and monitoring the provision and outcomes of contracted
96 services;
- 97 5. Being responsible for resource management of a comprehensive mental
98 health system including provision of staff support to appropriate advisory boards, and
99 serving as liaison to federal, state, and other governments and relevant organizations in
100 carrying out planning and allocation processes;
- 101 6. Ensuring the continuing availability of appropriate treatment services for
102 eligible individuals with a single diagnosis of a mental illness or a substance use or
103 dependency disorder; and
- 104 7. Developing and maintaining a continuum of appropriate treatment services
105 for eligible individuals with dual diagnoses of both a mental illness and a substance use
106 or dependency disorder.
- 107 D. ~~((The duties of the office of public defense shall include those duties specified~~
108 ~~in K.C.C. chapter 2.60.~~
- 109 E.)) The duties of the developmental disabilities division shall include the
110 following:
-

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

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

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

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

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

126 1. Providing publicly financed legal defense services that are constitutionally
127 required to the indigent and the near indigent person in all matters when there is some
128 factual likelihood that a person may be deprived of the person's liberty under the laws of
129 the state of Washington or King County, including, but not limited to, a violation of any
130 law of the state of Washington or county ordinance, juvenile and dependency matters,
131 mental illness and similar commitment proceedings, revocations in mental health civil
132 committee proceedings and habeas corpus proceedings when they arise in King County;

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

135 3. Investigating and determining eligibility for publicly financed legal defense
136 services. Indigent determination is controlled by chapter 10.101 RCW. In addition, the
137 department of public defense shall secure reimbursement from eligible persons, including
138 the parents of juveniles represented by attorneys assigned by the department of public
139 defense, when the person can afford to pay some or all of the cost to King County of
140 providing them such legal defense services;

141 4. Assigning cases to public defense attorneys consistent with the federal and
142 state constitutions and standards; and

143 5. Establishing and maintaining an assigned counsel panel that includes
144 attorneys acceptable to the department who wish to participate in the defense of persons
145 eligible under the public defense program.

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

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

151 A. Managing the department of public defense;

152 B. Ensuring the department employs the needed technical and public defense
153 expertise to ensure effective delivery of public defense services;

154 C. Representing the executive in all city, county, state and federal forums where
155 the defense perspective is required;

156 D. Ensuring that the American Bar Association Ten Principles for a Public
157 Defense System guide the development, management and department standards for legal
158 defense representation;

159 E. Following the Washington State Bar Association Standards for Indigent
160 Defense Services in establishing caseload limits for attorneys;

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

163 G. Establishing a process for paying for legal services and expenses when a
164 defendant is unable to do so. If the department and the defendant cannot agree on the
165 reasonableness of the request for payment of legal services and expenses, either the
166 department or the defendant may petition the superior court for a determination of
167 reasonableness.

168 SECTION 5. Ordinance 11955, Section 13, as amended, and K.C.C. 2.16.110 are
169 each hereby amended to read as follows:

170 A. The county executive shall appoint the county administrative officer and the
171 director of each executive department, except the departments of assessments, public
172 safety, elections and judicial administration. The county executive shall also appoint the
173 division director of the youth detention facility through a competitive search process that
174 includes participation by the superior court judges.

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

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

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

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

186 E.1.a All individuals appointed by the county executive, under Section 340.40 of
187 the King County Charter, shall serve in an acting capacity, unless confirmed by the
188 council. The executive is authorized to appoint a person to serve in an acting capacity to
189 fill a position requiring council confirmation for a period of no greater than one hundred
190 fifty days. The executive shall notify the council within ninety days concerning the status
191 of his or her search for qualified candidates for appointment to the vacant position.
192 Thereafter, the individual may continue serving in an acting capacity for successive sixty-
193 day periods only with approval by motion of the county council. The council shall grant
194 at least one successive sixty-day extension if the executive certifies to the council's
195 satisfaction that the executive is actively pursuing a search for qualified candidates for
196 appointment to the vacant position. If no appointment is transmitted to the council for
197 confirmation during the authorized period, the position shall be considered vacant for
198 purposes of exercise of any authority given to the position under ordinance and no salary
199 shall be paid for the position while it is so vacant.

200 b. Within seven calendar days of any executive appointment that is subject to
201 council confirmation, the executive shall deliver written notice of said appointment to the
202 council accompanied by a proposed motion confirming the appointment.

203 c. Upon the receipt of the notification by the executive of an appointment,
204 accompanied by the proposed motion, the council shall act to consider confirmation of
205 the appointment within ninety days. Approval of the introduced motion by a majority of
206 the council shall constitute confirmation of the appointee. Once confirmed, the appointee
207 is no longer serving in an acting capacity.

208 d. In considering the confirmation of executive appointments to offices of
209 management level responsibility, the council shall base its review on the ability of the
210 appointee to meet the following criteria:

211 (1) a demonstrated reputation for integrity and professionalism;

212 (2) a commitment to and knowledge of the responsibilities of the office;

213 (3) a history of demonstrated leadership, experience and administrative
214 ability;

215 (4) the ability to work effectively with the executive, the council, other
216 management, public agencies, private organizations and citizens; and

217 (5) a demonstrated sensitivity to and knowledge of the particular needs and
218 problems of minorities and women.

219 e. The appointee, before review of the appointment by the council, shall submit
220 to the chair of the council:

221 (1) a full and complete resume of his or her employment history, to include
222 references attesting to the stated employment experiences; and

223 (2) a signed statement acknowledging that the council's confirmation process
224 may require the submittal of additional information relating to the background and
225 expertise of the appointee.

226 f. Upon receipt of an executive appointment, the chair or his or her delegate,
227 subject to the council's rules of procedure, shall notify council members of the
228 appointment and attempt to allow a minimum of one work week for individual members
229 to submit written questions to the reviewing committee.

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

234 F. Subsection E. of this section does not apply to the appointment and
235 confirmation of the interim director of the department of public defense created in this
236 ordinance.

237 SECTION 6. A. The current director of the office of public defense shall be the
238 interim director of the department. The interim director may apply for the position of
239 director of the department of public defense.

240 B. The council requests the executive to negotiate any agreements necessary to
241 ensure implementation of the settlement agreement approved in Ordinance 17537 with
242 minimal disruption to client services, including but not limited to agreements related to
243 items in Attachment 1.

244 C. The executive may continue to pay the employees of the department the same
245 rates of pay the employees were earning at the public defender agencies until the
246 executive establishes pay rates and schedules.

247 D. If attorneys or staff of the private nonprofit public defender corporations who
248 become county employees on July 1, 2013, are employed by the county in a job
249 classification that has an assigned pay range that has a top step lower than the employees'
250 rate of pay on June 30, 2013, the executive may continue to pay the employees at the
251 higher rate of pay. If the executive decides to allow the higher rate of pay, the employees'
252 wage would be frozen until the top step of the pay range is greater than the employees'
253 frozen rate of pay.

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

256 The department shall manage cases and assign counsel to avoid conflicts of
257 interest, including but not limited to those that could arise from division-wide concurrent
258 representation of more than one client involved in a single matter, such as co-defendants
259 or defendant and a witness or suspect in the case or co-respondents or represented
260 members of a family in a dependency case or a respondent and an adverse witness in a
261 civil dependency case. If the department is unable to provide in-house representation
262 when a conflict exists, it shall assign counsel from the assigned counsel panel. The
263 department shall develop a policy to determine when a conflict exists and to avoid
264 conflicting representation. If the department is unable to provide representation when a
265 conflict exists, it shall assign counsel from the assigned counsel panel. The department

266 shall develop a policy to determine when a conflict exists and to avoid conflicting
267 representation.

268 NEW SECTION. SECTION 8. There is hereby added to K.C.C. Title 4A a new
269 section to read as follows:

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

273 SECTION 9. Ordinance 10167, Section 1, as amended, and K.C.C. 2.60.054 are
274 each hereby amended to read as follows:

275 A. A defendant requesting counsel at public expense shall pay a processing fee
276 ~~((of twenty-five dollars)), as specified in section 9 of this ordinance,~~ as reimbursement to
277 ~~((King)) the ((€))~~county for the administrative costs and expenses incurred in the
278 processing of the application. The processing fee is payable at the time the request for
279 ~~((public))~~ counsel is made to the ~~((office-))~~ department of public defense. Processing fees
280 are not refundable, even if the defendant is determined to be not eligible for counsel at
281 public expense. A defendant ~~((will))~~ shall not be denied counsel because the defendant
282 cannot pay the processing fee. ~~((All processing fee payments received shall be credited to
283 the county current expense fund.))~~

284 B. To be eligible to receive legal defense services through the public defense
285 program at no cost, the person must be financially unable to obtain adequate
286 representation without substantial hardship to the person and the person's family and
287 there must be some factual likelihood that the person will be deprived of his or her
288 liberty. If a person has some resources available that can be used to secure representation

289 but not sufficient resources to pay the entire costs of private legal services without
290 substantial hardship to the person and the person's family, the department of public
291 defense shall determine how much the person shall pay for the legal defense services
292 provided through the department of public defense.

293 C. The department of public defense may enter into agreements to provide
294 services to the state of Washington, tribal governments and municipalities in King
295 County on a full cost recovery basis, subject to council approval by ordinance when
296 required by law.

297 SECTION 10. A. Ordinance 14412, Section 3, as amended and K.C.C. 2.60.027
298 are each hereby repealed.

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

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

302 SECTION 11. The county council finds as a fact and declares that an emergency

303 exists and that this ordinance is necessary for the immediate preservation of public peace,
304 health or safety or for the support of county government and its existing public
305 institutions.

306

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. Transition Items

Transition Items

The following Office of Public Defense (OPD) transition items need to be addressed with the four private, nonprofit corporations in order to establish management terms within the framework of County policy and to ensure the continuity of County public defense service:

1. Resolution of contractual prepayment of open cases.
2. Completion of interim space planning for public defense staff, including any necessary lease agreements.
3. Determination of furniture, equipment and office supplies for public defense staff, including information technology equipment.
4. Completion of contract reconciliation for case services.
5. Completion of case management system implementation and logistics to ensure the system is operational.
6. Establishment of attorney and staff communication protocols and resources.
7. Transition of King County employee administrative services.
8. Determination of the continuing status of current non-County contracts currently held by the private, nonprofit corporations with the State of Washington, the City of Seattle, and the tribal governments.
9. The determination of the continuing status of grants or contract services related to the social justice programs of the private, nonprofit corporations.



KING COUNTY

Signature Report

April 30, 2013

Ordinance

Attachment 9

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Proposed No. 2013-0216.1

Sponsors Patterson

1 AN ORDINANCE making a net supplemental
2 appropriation of \$2,275,000 to various general fund
3 agencies and \$1,779,000 to various non-general fund
4 agencies and amending the 2013/2014 Biennial Budget
5 Ordinance, Ordinance 17476, Sections 43, 49 and 63, as
6 amended, and Attachment B, as amended.

7 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8 SECTION 1. From the general fund there is hereby appropriated a net total of
9 \$2,275,000 from various general fund agencies.

10 From various non-general funds there is hereby appropriated a net total of
11 \$1,779,000 from various non-general fund agencies, amending the 2013/2014 Biennial
12 Budget Ordinance, Ordinance 17476.

13 SECTION 2. Ordinance 17476, Section 43, as amended, is hereby amended by
14 adding thereto and inserting therein the following:

15 GENERAL GOVERNMENT GF TRANSFERS - From the general fund there is
16 hereby appropriated to

17 General government GF transfers \$1,779,000

18 SECTION 3. Ordinance 17476, Section 49 is hereby amended to read as follows:

19 ((OFFICE)) DEPARTMENT OF PUBLIC DEFENSE - From the general fund

20 there is hereby appropriated to:

21 ((Office)) Department of public defense \$41,481,187

22 The maximum number of FTEs for ((office)) department of public defense shall

23 be: 19.75

24 ER1 Expenditure Restriction:

25 Of this appropriation, \$300,000 shall not be encumbered or expended until the
26 executive transmits a letter to the council certifying that the ((office)) department of
27 public defense participated in developing a report identifying long-range strategies for
28 achieving efficiencies in the criminal justice system, as directed in section 19, Proviso P5,
29 of this ordinance, which is relating to the office of performance, strategy and budget.

30 The executive must file the letter required by this proviso in the form of a paper
31 original and an electronic copy with the clerk of the council, who shall retain the original
32 and provide an electronic copy to all councilmembers, the council chief of staff and the
33 lead staff to the budget and fiscal management committee or its successor.

34 P1 PROVIDED THAT:

35 Of this appropriation, ((~~\$20,000,000~~)) \$16,000,000 shall be expended or
36 encumbered only for public defense services in the first half of 2013 provided by the
37 private, nonprofit corporations with which the county presently contracts, supplemented
38 by assigned counsel, currently on a contract cycle of July 1 through June 30. Should the
39 executive wish to reorganize or restructure the delivery of public defense services, a
40 proposal and rationale for restructuring, with background information, must be presented
41 to the council with sufficient time in advance of the proposed effective date for the new

42 structure for the council to review and approve or reject the proposal after study and a
43 public hearing.

44 Prior to submitting a proposal to reorganize or restructure the delivery of public
45 defense services, the council requests the executive to consult with interested parties,
46 including the current private, nonprofit corporations providing public defense services,
47 labor unions representing employees of those private, nonprofit corporations, bar leaders,
48 and other governments currently served by the same private, nonprofit corporations that
49 provide service to the county.

50 SECTION 4. Ordinance 17476, Section 49, as amended, is hereby amended by
51 adding thereto and inserting therein the following:

52 DEPARTMENT OF PUBLIC DEFENSE - From the general fund there is hereby
53 appropriated to:

54 Department of public defense \$490,000

55 The maximum number of additional FTEs for department of public defense

56 shall be: 355.00

57 SECTION 5. Ordinance 17476, Section 63, as amended, is hereby amended by
58 adding thereto and inserting therein the following:

59 CAPITAL IMPROVEMENT PROGRAM - From the several capital
60 improvement project funds there are hereby appropriated and authorized to be disbursed
61 the following amounts for the specific projects identified in Attachment A to this
62 ordinance.

63	Fund	Fund Name	2013
64	3771	KCIT CAPITAL PROJECTS	\$1,529,000

65 3951 BUILDING REPAIR AND REPLACEMENT \$250,000

66 **TOTAL GENERAL CIP \$1,779,000**

67 SECTION 6. Sections 3 and 4 of this ordinance take effect on the effective date
68 of the ordinance creating the department of public defense. (Proposed Ordinance 2013-
69 0215).

70

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Gossett, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. General Government Capital Improvement Program

April 25, 2013

The Honorable Larry Gossett
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember Gossett:

This letter transmits two ordinances related to the reorganization of the Office of Public Defense: an ordinance with proposed King County Code revisions and a supplemental budget ordinance. This transmittal is in response to King County Council Motion 13886, relating to the timeline for reorganizing public defense services for King County. That motion addressed Council-adopted Ordinance 17537, which approved a proposed settlement agreement in the *Dolan v. King County* class action lawsuit calling for the recognition of the current employees of the public defense nonprofit corporations as County employees on July 1, 2013.

Motion 13886 requests that:

“...the executive work with the council to develop an interim plan to cover the timeframe between June 30, 2013, and full implementation of an ordinance organizing the structure of delivery of public defense services.”

The ordinance revising King County Code provides the following:

- The creation of a Department of Public Defense with four divisions;
- A definition of the responsibilities and duties of the department, which includes the authority for the County to provide public defense services directly, rather than via contract;
- Independence and authority to hire at department level classifications the staff needed to provide services within a new public defense department and its divisions;
- The terms for creating an interim director to manage the transition; and
- The authority to enter into agreements to provide services to the state of Washington, tribal governments and municipalities in King County on a full cost recovery basis.

The supplemental budget ordinance provides full time equivalent (FTE) authority to hire all 355 of the people currently employed at the private, nonprofit corporations. This includes private, nonprofit corporation staff working on contracts or projects not related to King County work (e.g., tribal courts, Seattle Municipal Court and Sexually Violent Predator contracts). Transition planning assumes that these employees will, in large part, maintain their current operational work structure and locations. In addition, the supplemental provides funding needed for logistical work associated with the transition, including work by the Human Resources Division, Facilities Management Division, and King County Information Technology, as well as the existing Office of Public Defense.

I have directed the Office of Public Defense Director to continue to work with the private, nonprofit corporations' management to establish the agreements required for continuation of public defense services, including the resolution of prepayment of open cases; space planning for public defense staff; furniture, equipment, and office supplies for public defense staff; contract reconciliation for case services; attorney and staff communication protocols and resources; and provision of continuing management and administrative services provided by corporate upper management. We will continue to work with Council staff, the private, nonprofit corporations' management and staff, and other stakeholders to address concerns as they arise, and to plan a thoughtful transition to the interim organizational structure.

The ordinances enclosed support the Justice and Safety Goal of the King County Strategic Plan to "Support safe communities and accessible justice systems for all," and specifically Strategy 2.a: "Ensure the availability of public defenders for those who need them." The proposal also supports the Financial Sustainability and Quality Workforce goals of the Strategic Plan.

I am proud to welcome public defenders as King County employees. With the Washington Supreme Court's decision and the proposed settlement agreement, we have a new reality that requires a different model for public defense for both the employees and for County government. I know the Council shares my commitment to uphold a high-quality, cost-effective and independent public defense system and to ensuring a continuity of service to indigent defendants during the transition to the new reality. Thank you for your consideration of this important legislation.

If you have any questions, please feel free to contact David Chapman, Office of Public Defense Director, at 206-263-2174.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
 ATTN: Michael Woywod, Chief of Staff
 Anne Noris, Clerk of the Council
The Honorable Dan Satterberg, King County Prosecuting Attorney
The Honorable Richard McDermott, Presiding Judge, King County Superior Court
The Honorable Corinna Harn, Presiding Judge, King County District Court
Carrie S.Cihak, Chief Advisor, Policy and Strategic Initiatives, King County
 Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Jackie MacLean, Director, Department of Community and Human Services (DCHS)
David Chapman, Director, Office of Public Defense, DCHS

FISCAL NOTE (REVISED)

Attachment 11

Ordinance/Motion No. 2013-0215 and 0216
 Title: OPD Transition Supplemental Budget
 Affected Agency and/or Agencies: Office of Public Defense
 Note Prepared By: Krishna Duggirala
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be: 250,000

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
Building Repair & Replacement	3951	GF Transfer	250,000			
TOTAL						

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
Building Repair & Replacement	3951		250,000	0	0	0
TOTAL			250,000			

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
DES FMD OPD Planning/1120508	100,000	0	0	0
DES FMD OPD Transition/1120507	150,000	0	0	0
		0	0	0
TOTAL	250,000			

Footnotes:

Currently, the private, nonprofit corporations have offices throughout King County. When the individuals in those private, nonprofit corporations become County employees on July 1, 2013, it is anticipated that they will remain in their current work locations. In the long-term, depending on the outcome of Council decisions, the various offices in downtown Seattle may need to be consolidated into one location. The OPD transition supplemental request includes \$100,000 to fund planning for the long-term relocation and consolidation of the Seattle offices (project 1120508). The state of the current leased space is not fully known to the County at this time and \$150,000 is requested as a contingency in case tenant improvements are needed in those spaces (Project 1120507). Such improvements might include upgrades for ADA compliance or security, and/or the need to make physical barriers for people performing County vs. non-County work. Tenant Improvement funds will not be expended without prior approval by OPD and PSB.

FISCAL NOTE

Attachment 11

Ordinance/Motion No. 00-
 Title: KCIT-OPD Case Management Project
 Affected Agency and/or Agencies: King County Information Technology, Office of Public Defense
 Note Prepared By: Junko Keesecker
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD	3771	GF Transfer	749,000			
TOTAL			749,000			

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD/1120358	3771	N/A	749,000			
TOTAL			749,000			

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
56990 CIP Expenditures	749,000			
TOTAL	749,000			

Notes

Currently, each of the four private, nonprofit corporations operates its own case management system. When the employees of the private, nonprofit corporations become County employees on July 1, 2013, a single case management system will be needed. This request will fund requirements gathering, selection of one of the four existing systems as an interim system for all attorneys, license, data migration and training. Depending on the ability of the case management system selected as an interim

FISCAL NOTE

Attachment 11

Ordinance/Motion No. 00-
 Title: KCIT-OPD Network Improvements
 Affected Agency and/or Agencies: King County Information Technology, Office of Public Defense
 Note Prepared By: Junko Keesecker
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD	3771	GF Transfer	780,000			
TOTAL						

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
3771/KCIT OPD/1120359	3771	N/A	780,000			
TOTAL						

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
56990 CIP Expenditures	780,000			
TOTAL				

Note

When the County begins providing public defense services directly on July 1, 2013, it is anticipated that some of the computers used by public defenders currently will need to be replaced. All of the computers, new or existing, will need to be configured to work on the County network, upgraded to County security standards, and additional servers and network support may be needed. Because the County has limited knowledge of the existing computer inventory, this request assumes that one-third of the existing machines, roughly 100, will be replaced in 2013. The request also includes the staff time needed to configure all public defense computers for the County network, some network and server costs, and a 15% contingency.

FISCAL NOTE

Attachment 11

Ordinance/Motion No. 00-
 Title: OPD Transition Supplemental Budget
 Affected Agency and/or Agencies: Office of Public Defense, King County Information Technology, Facilities Management Division
 Note Prepared By: Krishna Duggirala
 Note Reviewed By: Krista Camenzind

Impact of the above legislation on the fiscal affairs of King County is estimated to be: 2,275,000

Revenue to:

Fund/Agency	Fund Code	Revenue Source	Current Year	1st Year	2nd Year	3rd Year
TOTAL						

Expenditures from:

Fund/Agency	Fund Code	Department	Current Year	1st Year	2nd Year	3rd Year
General Fund - Public Defense	000000010	A95000	496,000	0	0	0
General Fund - GF Transfers	000000010	A69500	1,779,000			
TOTAL			2,275,000			

Expenditures by Categories

	Current Year	1st Year	2nd Year	3rd Year
¹ Personnel for on boarding	368,000	0	0	0
² Supplies for additional staff	45,000	0	0	0
³ 20% Contingency	83,000	0	0	0
⁴ GF Transfer to KCIT	1,529,000	0	0	0
⁵ GF Transfer to FMD	250,000	0	0	0
TOTAL	2,275,000			

Footnotes:

¹ In preparation for individuals at the private, nonprofit corporations becoming County employees on July 1, 2013, dedicated resources from HRD, including staff and consultants, will be needed. Additionally, OPD will hire some support positions before July 1 to prepare for the transition.

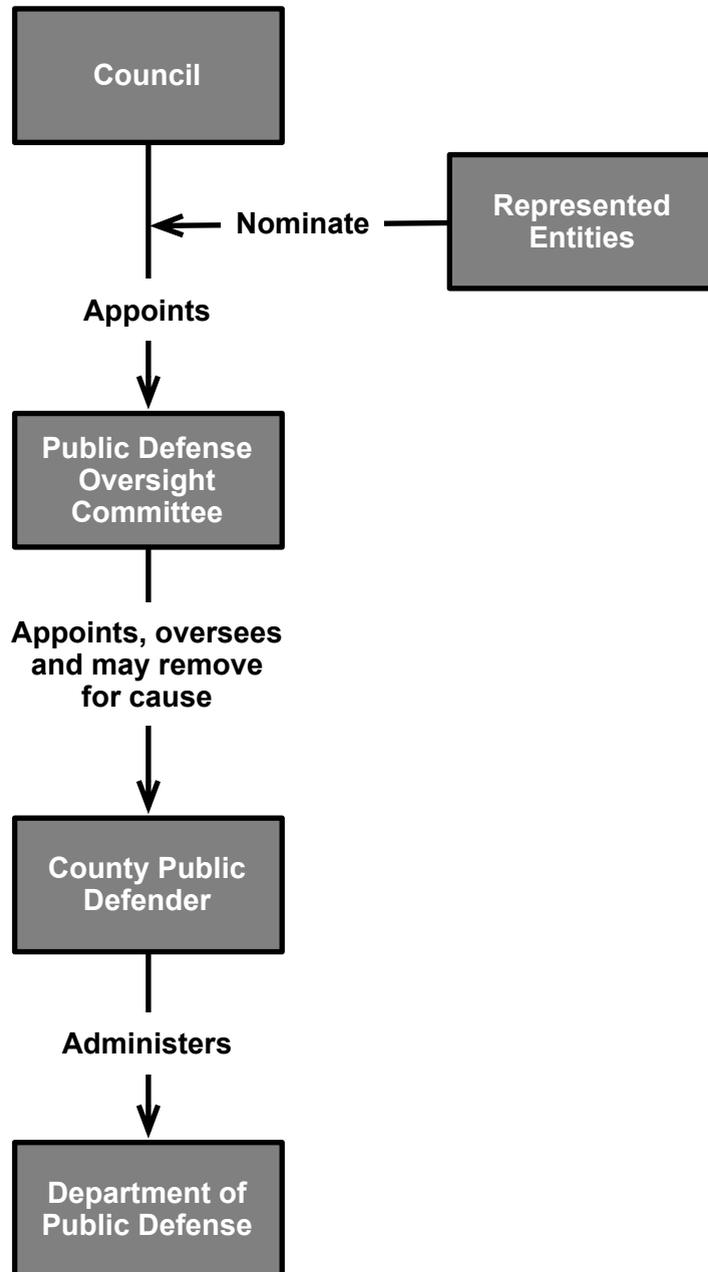
² Supplies budget is estimated costs of startup supplies, such as business cards, nameplates, miscellaneous office supplies, and ORCA cards.

³ 20% contingency is calculated on the above two items.

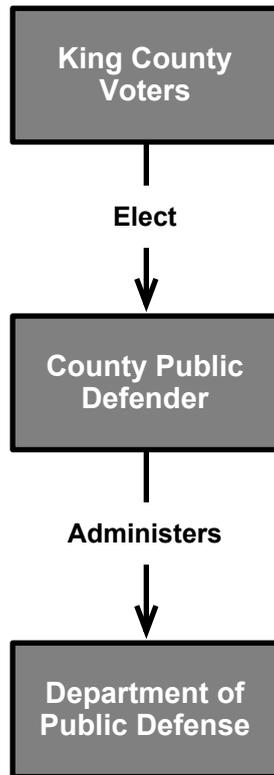
⁴ Transfer to King County Information & Technology (KC IT) is for a single case management system and for costs associated with immediate needs, such as replacing out of date computers, security and network upgrades, and configuring computers for the County system.

⁵ Transfer to Facilities Management Division of \$100,000 for long-term relocation planning for the downtown Seattle offices and \$150,000 for potential tenant improvements at existing lease locations. Tenant improvement funds will not be spent without PSB approval.

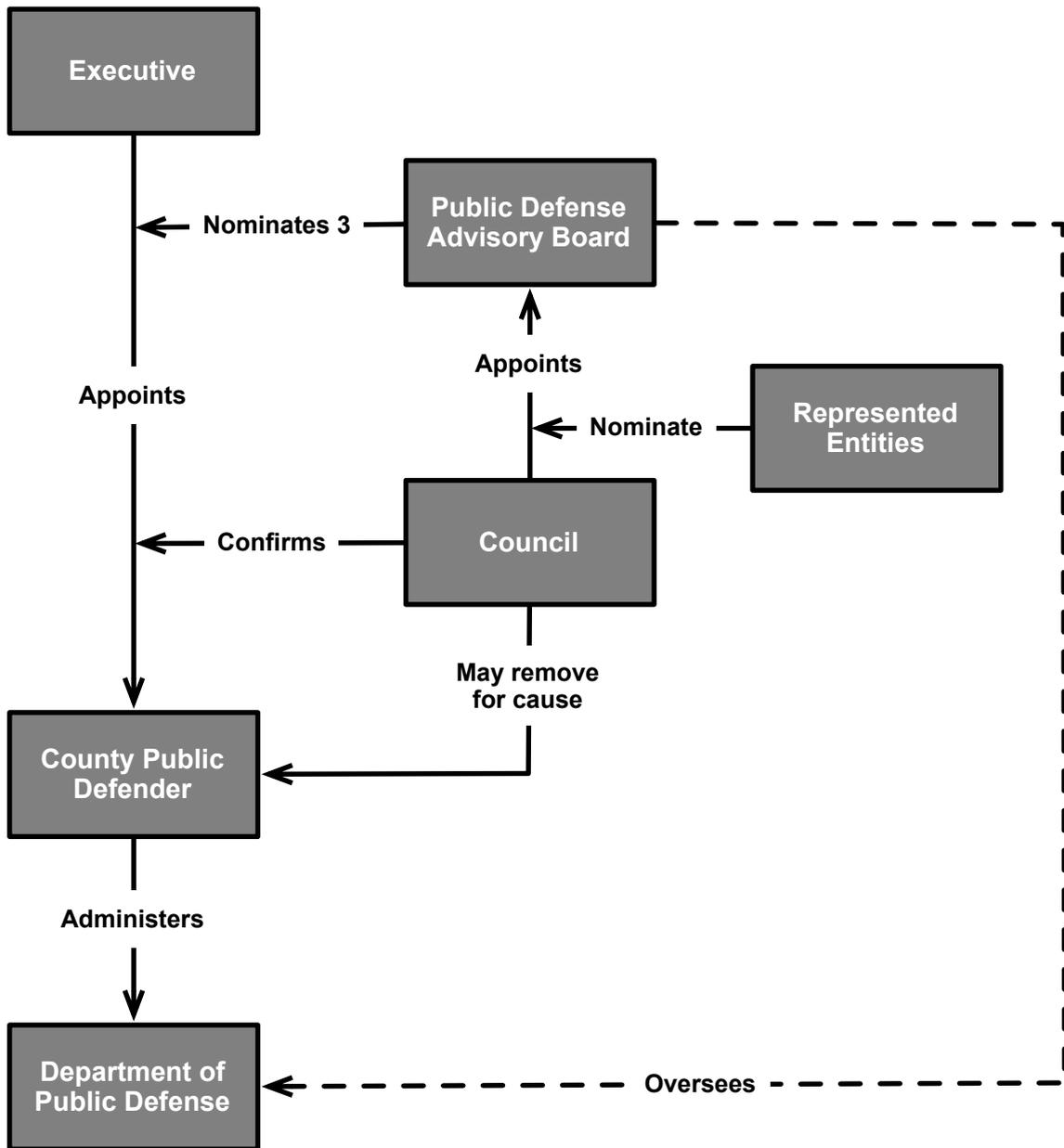
Appointment by Commission



Election



Appointment by Executive



Commission appointment – charter amendment – 2013-04-29

1. Creates new Department of Public Defense (DPD) within executive branch.
2. Creates new office of County Public Defender (CPD).
3. Creates new Public Defense Oversight Commission (PDOC).
4. DPD responsibilities include “providing legal counsel and representation to indigent individuals in legal proceedings, including those in the superior and district courts for King County and in appeals from those courts, to the extent required under the sixth amendment to the United State Constitution or Article 1, Section 22, of the Constitution of the State of Washington.”
5. CPD:
 - a. Administers the DPD;
 - b. Bargains with DPD employees concerning working conditions other than compensation and benefits, and must consult with executive for that purpose and submit joint proposal to council for legislation re. joint bargaining.
 - c. To be eligible for appointment or reappointment, must be admitted to practice law in Washington and have at least seven years of experience as an attorney primarily practicing criminal defense. – Council may establish additional qualifications.
6. PDOC:
 - a. Has membership prescribed by ordinance;
 - b. Appoints the CPD to a term of four years, may reappoint for additional four-year terms, and may remove for cause, which may be defined by ordinance;
 - c. Acts by simple majority, except council may prescribe supermajority requirement for removing CPD for cause;
 - d. Oversees the DPD.
7. Council shall:
 - a. Prescribe membership of PDOC by ordinance;
 - b. Appoint members to the PDOC;
 - c. Set compensation of CPD by ordinance.
8. Council may, by ordinance:
 - a. Define cause for removal of CPD;
 - b. Set a PDOC supermajority requirement for removal for cause;
 - c. Establish additional qualifications of CPD.
9. Entities represented on PDOC must recommend three candidates for each appointment of their representative.

Commission appointment – companion ordinance

1. CPD qualifications;
 - a. Admitted to practice law in Washington;
 - b. At least seven years as attorney primarily practicing criminal defense;
 - c. Not convicted of a crime;
 - d. Not been found to have engaged in misconduct under Washington Rules of Professional Conduct or stipulated to such a finding.
2. CPD to be compensated at same rate as county prosecuting attorney.
3. Cause for removal of CPD includes:
 - a. Grounds for vacancy of elective office under charter Section 680¹;
 - b. Failure to obtain or maintain admission to practice law in Washington;
 - c. Failure to have, at the time of appointment, at least seven years of experience as an attorney primarily practicing criminal defense;
 - d. Conviction of a crime;
 - e. A finding or stipulation of misconduct under the Washington Rules of Professional Conduct.
4. CPD duties:
 - a. Manage the DPD;
 - b. Ensure effective delivery of services;
 - c. Speak publicly on issues related to public defense when the CPD, in his or her discretion, deems it appropriate, including advocacy in support of (1) funding for public defense and social and health services and (2) social justice;
 - d. Follow ABA Ten Principles for a Public Defense System [from exec’s draft];
 - e. Follow WSBA Standards for Indigent Defense Services [from exec’s draft];
 - f. Develop standards and guidelines;
 - g. Establish process for determining eligibility and obtaining payment when appropriate.
5. PDOC:
 - a. Shall consist of nine members—one representative each of:
 - i. The Washington Association of Criminal Defense Lawyers;
 - ii. The Washington State Office of Public Defense;
 - iii. The Washington State Bar Association;
 - iv. The King County Bar Association;

¹ “An elective county office shall become vacant upon the incumbent’s death; resignation; recall; conviction of a felony, crime involving moral turpitude, unlawful destruction of court records, or other crime pertinent to his office; declaration of incompetency by a court of competent jurisdiction; absence from the county for a period of more than thirty days without the permission of a majority of the county council; or failure to fulfill or continue to fulfill the qualifications for office; provided, however, that an elective county office shall not become vacant as the result of a criminal conviction or declaration of incompetency until the conviction or declaration has become final and is no longer subject to appeal.”

- v. A nonpartisan organization active in King County that focuses on mental health issues, such as the King County Mental Health Advisory Board;
 - vi. A nonpartisan organization active in King County that focuses on substance abuse issues, such as the King County Alcoholism and Substance Abuse Administrative Board;
 - vii. A nonpartisan organization active in King County that focuses on issues concerning military veterans, such as the King County Veterans Program Advisory Board;
 - viii. A nonpartisan organization active in King County that focuses on issues related to poverty;
 - ix. A nonpartisan organization active in King County that focuses on issues concerning youth.
- b. Each member to have substantial experience and expertise relevant to the work of DPD and an ability and willingness to commit the time necessary to attend meetings and participate effectively.
 - c. Majority of members to have substantial experience in providing indigent defense representation.
 - d. To the extent practicable, should reflect the diversity of DPD clients.
 - e. “No member may hold elective public office, be a candidate for elective public office, or serve as a prosecuting attorney or a court employee while serving on the commission.”
 - f. Appointed by council; may be reappointed; five votes required for appointment or reappointment.
 - g. Individual member can be removed by council if “unable or unwilling to participate effectively in the work of the commission” or “engages in misconduct that undermines the member’s effectiveness as a commission member.” Six votes required for removal.
 - h. Staggered seven-year terms.
 - i. Initial terms:
 - i. State bar association: one year;
 - ii. County bar association: two years;
 - iii. State office of public defense: three years;
 - iv. State association of criminal defense attorneys: four years;
 - v. Organization that advocates on behalf of persons with mental illness and developmental disabilities: five years;
 - vi. Organization that advocates on behalf of military veterans: six years; and
 - vii. Organization that advocates on behalf of juveniles: seven years.
 - j. Designation of CPD as county’s bargaining agent for working conditions other than compensation and benefits.

Elected PD – charter amendment – 2013-04-29

1. Creates new Department of Public Defense (DPD) within executive branch.
2. Creates new, elective office of County Public Defender (CPD).
3. DPD responsibilities include “providing legal counsel and representation to indigent individuals in legal proceedings, including those in the superior and district courts for King County and in appeals from those courts, to the extent required under the sixth amendment to the United State Constitution or Article 1, Section 22, of the Constitution of the State of Washington.”
4. CPD:
 - a. Administers the DPD;
 - b. Bargains with DPD employees concerning working conditions other than compensation and benefits, and must consult with executive for that purpose and submit joint proposal to council for legislation re. joint bargaining.
 - c. To be eligible for appointment or reappointment, must be admitted to practice law in Washington and have at least seven years of experience as an attorney primarily practicing criminal defense. – Council may establish additional qualifications.
 - d. Would be subject to removal from office by operation of law under charter Section 680, or by recall under charter section 670, like any other elected county official.
5. Council shall set compensation of CPD by ordinance
6. Council may establish, by ordinance, additional qualifications of CPD

Executive appointment – Companion ordinance

1. CPD qualifications;
 - a. Admitted to practice law in Washington;
 - b. At least seven years as attorney primarily practicing criminal defense;
 - c. Not convicted of a crime;
 - d. Not been found to have engaged in misconduct under Washington Rules of Professional Conduct or stipulated to such a finding.
2. CPD to be compensated at same rate as county prosecuting attorney.
3. CPD duties:
 - a. Manage the DPD;
 - b. Ensure effective delivery of services;
 - c. Speak publicly on issues related to public defense when the CPD, in his or her discretion, deems it appropriate, including advocacy in support of (1) funding for public defense and social and health services and (2) social justice;
 - d. Follow ABA Ten Principles for a Public Defense System [from exec's draft];
 - e. Follow WSBA Standards for Indigent Defense Services [from exec's draft];
 - f. Develop standards and guidelines;
 - g. Establish process for determining eligibility and obtaining payment when appropriate.
4. Designation of CPD as county's bargaining agent for working conditions other than compensation and benefits.

Executive appointment – charter amendment – 2013-04-27

1. Creates new Department of Public Defense (DPD) within executive branch.
2. Creates new office of County Public Defender (CPD).
3. Creates new Public Defense Advisory Board (PDAB) [using exec's term].
4. DPD responsibilities include “providing legal counsel and representation to indigent individuals in legal proceedings, including those in the superior and district courts for King County and in appeals from those courts, to the extent required under the sixth amendment to the United State Constitution or Article 1, Section 22, of the Constitution of the State of Washington.”
5. CPD:
 - a. Administers the DPD;
 - b. Bargains with DPD employees concerning working conditions other than compensation and benefits, and must consult with executive for that purpose and submit joint proposal to council for legislation re. joint bargaining.
 - c. To be eligible for appointment or reappointment, must be admitted to practice law in Washington and have at least seven years of experience as an attorney primarily practicing criminal defense. – Council may establish additional qualifications.
6. Executive:
 - a. Shall appoint CPD to a term of four years from among three candidates recommended by the PDAC.
 - b. May reappoint CPD to additional four-year terms.
7. PDAB:
 - a. Has membership prescribed by ordinance;
 - b. Recommends three CPD candidates for consideration by executive;
 - c. Acts by simple majority.
 - d. Oversees the DPD.
8. Council shall:
 - a. Prescribe membership of PDAC by ordinance;
 - b. Appoint members to the PDAC;
 - c. Set compensation of CPD by ordinance.
9. Council may:
 - a. Define, by ordinance, cause for removal of CPD;
 - b. Remove the CPD for cause (requires at least six affirmative votes);
 - c. Establish, by ordinance, additional qualifications of CPD.

Executive appointment – Implementing ordinance – 2013-04-29

1. CPD qualifications;
 - a. Admitted to practice law in Washington;
 - b. At least seven years as attorney primarily practicing criminal defense;
 - c. Not convicted of a crime;
 - d. Not been found to have engaged in misconduct under Washington Rules of Professional Conduct or stipulated to such a finding.
2. CPD to be appointed by executive from among three candidates nominated by PDAC.
3. CPD to be compensated at same rate as county prosecuting attorney.
4. CPD duties:
 - a. Manage the DPD;
 - b. Ensure effective delivery of services;
 - c. Speak publicly on issues related to public defense when the CPD, in his or her discretion, deems it appropriate, including advocacy in support of (1) funding for public defense and social and health services and (2) social justice;
 - d. Follow ABA Ten Principles for a Public Defense System [from exec's draft];
 - e. Follow WSBA Standards for Indigent Defense Services [from exec's draft];
 - f. Develop standards and guidelines;
 - g. Establish process for determining eligibility and obtaining payment when appropriate.
5. Cause for removal of CPD includes:
 - a. Grounds for vacancy of elective office under charter Section 680¹;
 - b. Failure to obtain or maintain admission to practice law in Washington;
 - c. Failure to have, at the time of appointment, at least seven years of experience as an attorney primarily practicing criminal defense;
 - d. Conviction of a crime;
 - e. A finding or stipulation of misconduct under the Washington Rules of Professional Conduct.
6. DPD duties:
 - a. Provide constitutionally-required legal defense services to indigent and near-indigent [may need clarification].
 - b. Assign cases as needed to outside counsel.

¹ "An elective county office shall become vacant upon the incumbent's death; resignation; recall; conviction of a felony, crime involving moral turpitude, unlawful destruction of court records, or other crime pertinent to his office; declaration of incompetency by a court of competent jurisdiction; absence from the county for a period of more than thirty days without the permission of a majority of the county council; or failure to fulfill or continue to fulfill the qualifications for office; provided, however, that an elective county office shall not become vacant as the result of a criminal conviction or declaration of incompetency until the conviction or declaration has become final and is no longer subject to appeal."

- c. Duties re. operations, efficiency, budget, etc.
7. PDAB:
- a. Shall consist of nine members—one representative each of:
 - i. The Washington Association of Criminal Defense Lawyers;
 - ii. The Washington State Office of Public Defense;
 - iii. The Washington State Bar Association;
 - iv. The King County Bar Association;
 - v. A nonpartisan organization active in King County that focuses on mental health issues, such as the King County Mental Health Advisory Board;
 - vi. A nonpartisan organization active in King County that focuses on substance abuse issues, such as the King County Alcoholism and Substance Abuse Administrative Board;
 - vii. A nonpartisan organization active in King County that focuses on issues concerning military veterans, such as the King County Veterans Program Advisory Board;
 - viii. A nonpartisan organization active in King County that focuses on issues related to poverty;
 - ix. A nonpartisan organization active in King County that focuses on issues concerning youth.
 - b. Each member to have substantial experience and expertise relevant to the work of DPD and an ability and willingness to commit the time necessary to attend meetings and participate effectively.
 - c. Majority of members to have substantial experience in providing indigent defense representation.
 - d. To the extent practicable, should reflect the diversity of DPD clients.
 - e. “No member may hold elective public office, be a candidate for elective public office, or serve as a prosecuting attorney or a court employee while serving on the commission.”
 - f. Appointed by council; may be reappointed; five votes required for appointment or reappointment.
 - g. Individual member can be removed by council if “unable or unwilling to participate effectively in the work of the commission” or “engages in misconduct that undermines the member’s effectiveness as a commission member.” Six votes required for removal.
 - h. Staggered three-year terms, so initial terms of members will vary from one to three years and three seats will be reappointed each year.
8. PDAB duties:
- a. Support DPD and CPD;
 - b. Review DPD and CPD, make recommendations, advise;

- c. Meet at least once every two months;
 - d. Issue at least two reports each year: one on the state of county public defense; one on the executive's proposed budget for public defense;
 - e. Within 90 days after CPD vacancy occurs (or sooner if the vacancy is known ahead of time), provide to executive (with contemporaneous copy to council clerk) three qualified nominees to fill the vacancy.
9. Entities represented on PDAB would recommend one candidate for each appointment of their representative.
10. Designation of CPD as county's bargaining agent for working conditions other than compensation and benefits. – Requirement that CPD and county executive consult in advance to plan collective bargaining; in event of unresolvable disagreement, issue is presented to council, which may, if it wishes, provide direction.



KING COUNTY

Signature Report

April 9, 2013

Motion 13886

Proposed No. 2013-0162.1

Sponsors Patterson, Hague, Dembowski and
Gossett

1 A MOTION relating to the implementation timeframe for
2 reorganizing public defense services in King County.

3 WHEREAS public defense services are mandated by the United States
4 Constitution, the Washington State Constitution and state law, and

5 WHEREAS the Sixth Amendment of the United States Constitution and Article I,
6 Section 22 of the Washington State Constitution guarantee assistance of counsel to every
7 citizen accused of a matter where loss of liberty is possible, and

8 WHEREAS since the 1970s King County has contracted with private, nonprofit
9 corporations for the provision of most indigent public defense services, and

10 WHEREAS these corporations were viewed by the county as independent
11 contractors and these corporations' employees therefore did not receive King County
12 benefits nor were they enrolled in the Public Employees' Retirement System, and

13 WHEREAS, in January 2006, a class action lawsuit was filed against King
14 County, alleging that the employees of these corporations were county employees and
15 that King County had a duty to enroll them in the Public Employees' Retirement System,
16 and

17 WHEREAS, in February 2009, a Pierce county superior court judge ruled that the
18 county had exercised such control over the corporations that they were effectively county

19 agencies and their employees were employees of the county for purposes of enrollment in
20 the Public Employees' Retirement System, and

21 WHEREAS, in August 2011, the Washington Supreme Court affirmed the trial
22 court's decision in a five to four decision and the county's motion for reconsideration was
23 denied, and

24 WHEREAS, in March 2012, the trial court entered an order requiring King
25 County to enroll the current employees of the public defense firms in the Public
26 Employees' Retirement System, which the county did, and

27 WHEREAS, on March 18, 2013, the King County council adopted Ordinance
28 17537 approving a proposed settlement agreement that would recognize the current
29 employees of the public defense firms as county employees on July 1, 2013, and

30 WHEREAS, the King County executive transmitted Proposed Ordinance 2013-
31 0108, which would create a Department of Public Defense with two divisions, and

32 WHEREAS, the King County executive has indicated that he plans to begin
33 taking steps to implement the new structure, including the hiring of two division
34 directors, as early as April 2013 contingent on the King County council's approval of the
35 proposed structure, and

36 WHEREAS, the King County council is committed to a thoughtful process for
37 analyzing and considering the legal, fiscal, and policy issues of the proposal in order to
38 ensure that the new public defense structure is consistent with best practices, such as the
39 American Bar Association's ten principles of a public defense delivery system, and

40 WHEREAS, the council is committed to continue to include in its process close
41 and collaborative consultation with indigent public defense corporations, employees, and
42 others with interest and expertise in public defense services, and

43 WHEREAS, it might be impracticable for the council to act before May 2013 in
44 light of the need for the council to fully analyze and explore potential options, and

45 WHEREAS, in coordination with enactment of an ordinance organizing the
46 structure of delivery of public defense services sufficient time and care will be necessary
47 to implement the structure and also ensure the continuous delivery to all persons of their
48 constitutionally-guaranteed right to assistance of counsel;

49 NOW, THEREFORE, BE IT MOVED by the Council of King County:

50 The King County council requests that the executive work with the council to
51 develop an interim plan to cover the timeframe between June 30, 2013, and full
52 implementation of an ordinance organizing the structure of delivery of public defense

53 services. The King County executive should consider the possibility that the interim
54 timeframe might need to continue through December 31, 2013, or thereafter.
55

Motion 13886 was introduced on 4/1/2013 and passed by the Metropolitan King
County Council on 4/8/2013, by the following vote:

Yes: 9 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,
Ms. Patterson, Ms. Lambert, Mr. Dunn, Mr. McDermott and Mr.
Dembowski
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Larry Gossett, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments: None